IN THE

Supreme Court of the United States

October Term, 1953
NO. 56

JOSEPH GARNER and A. JOSEPH GARNER, trading as CENTRAL STORAGE & TRANSFER COMPANY,

Petitioners

v.

TEAMSTERS, CHAUFFEURS and HELPERS LOCAL UNION No. 776 (A.F.L.), ED LONG, President; ALLEN KLINE, Business Manager, et al.

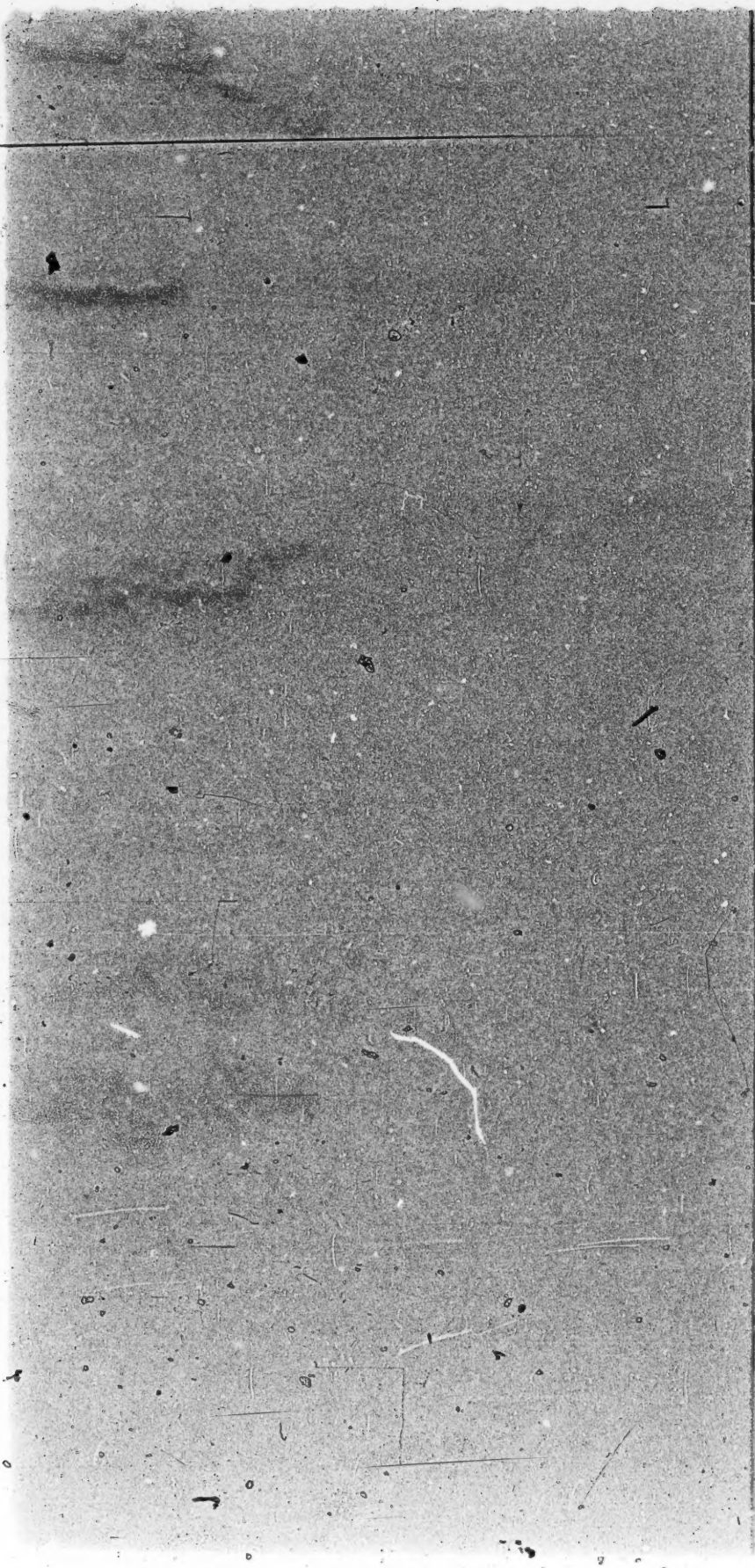
Brief For Respondents

On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania

On the Brief
SIDNEY G. HANDLER,
MORRIS P. GLUSHIEN

SIDNEY G. HANDLER,
EDWARD DAVIS,
Attorneys for Respondents.

Keystone Building
Harrisburg, Pa.

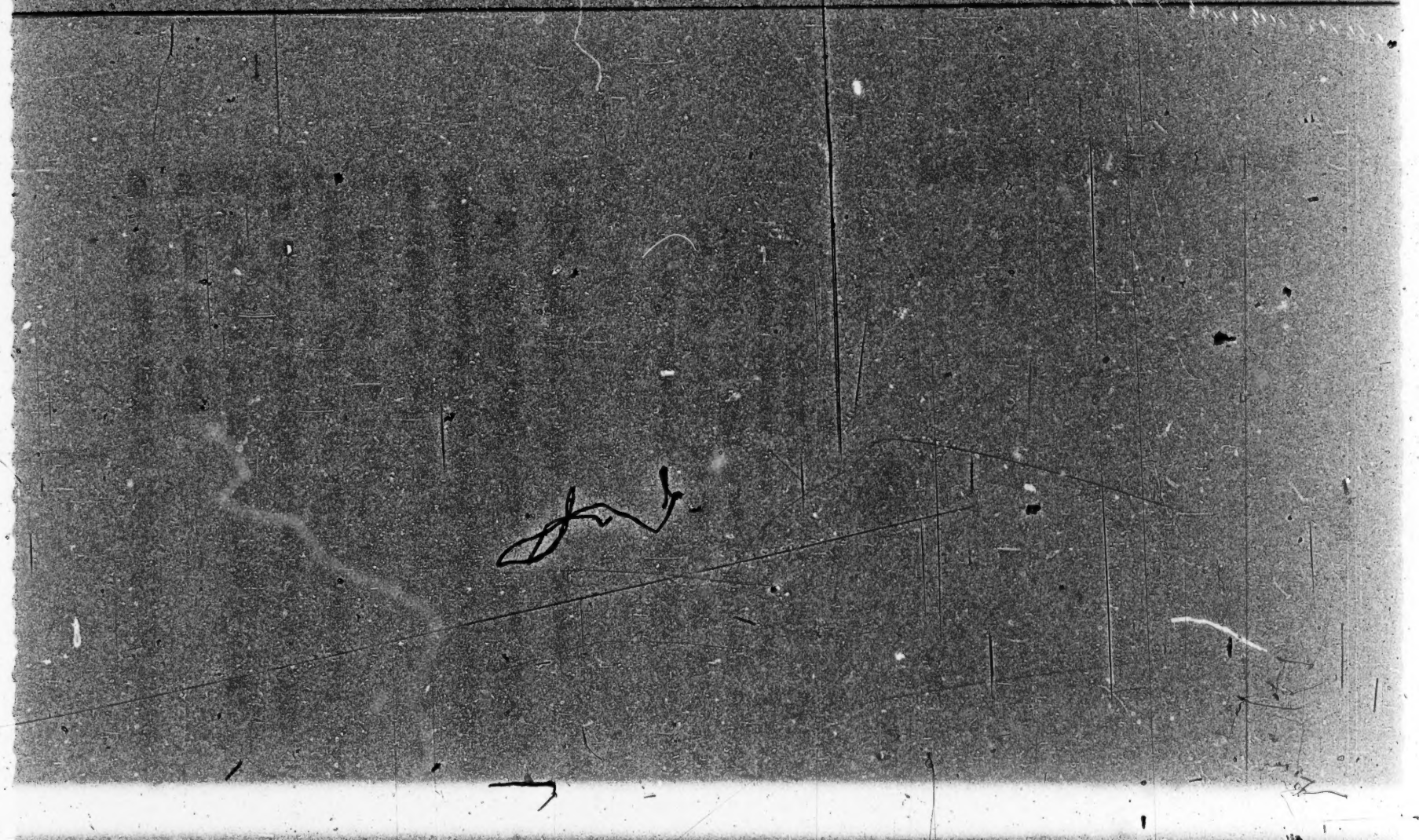


INDEX

OUTLINE

CITATIONS

STATUTES:



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 195[illegible]
No. 5[illegible]

Joseph Garner and A. Joseph Garner, trading as
Central Storage and Transfer Company,
Petitioners

v.

Teamsters, Chauffeurs and Helpers Local Union No. 776
(A.F.L.), Ed Long, President, Allen Kline, Business
Manager, et al.

On writ of Certiorari to the Supreme Court of the
Commonwealth of Pennsylvania

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The majority opinion of the Supreme Court of Pennsylvania ([illegible]) is reported at 373 Pa. [illegible], and the dissenting opinion ([illegible]) at 373 Pa. [illegible]. The decision of the Court of Common Pleas of Dauphin County, Pennsylvania ([illegible]) is reported at [illegible] Dauphin County Reporter, [illegible].

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3). The Petition for a writ of certiorari was granted on June 16, 1952, ——— U.S. ———.

QUESTIONS PRESENTED

This case presents the following question in addition to the question as stated in Petitioner's brief at page 2:

Is the activity of a Union which consists solely of a peaceful appeal to workmen to join its ranks through use of picketing protected by the Labor Management Relations Act, 1947, and the Constitution of the United States, or, if subject to any regulation, then only the regulation of the National Labor Relations Board, and thus free from restraint by state courts?

STATUTES INVOLVED

Some of the pertinent provisions of the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U.S.C. Supp. V, 141 *et seq* are set forth in Brief for Petitioners at pages 2 to 8 inclusive, and the other provisions of the same statute are set forth in the Appendix to Brief For The National Labor Relations Board as Amicus Curiae.

The pertinent provisions of the Pennsylvania Labor And Injunction Act, approved June 2, 1937, P. L. 1198, 43 PS 206a *et seq.* and the amendments thereto approved June 9, 1939, P. L. 302, 43 PS 206d, are set forth in the Appendix, *infra*, pp. 62-71.

The pertinent provisions of the Pennsylvania Labor Relations Act, approved June 1, 1937, P. L. 1168, No. 294, 43 PS 211.1 *et seq*, the amendments thereto approved June 9, 1939, P. L. 305, 43 PS 211.6(2)(a) to (c), and the amendments thereto approved July 7, 1947, P. L. 1445, 43 PS 211.6 (2) (d) (e), are set forth in the Appendix, *infra*, pp. 57-61.

STATEMENT

Petitioners are engaged in the freight trucking business. They operate a local pick-up and delivery service for the Reading Railroad Company and its trucking division and also provide interchange and delivery service for other trucking companies, under the trade name of Central Storage & Transfer Company. (Findings of Fact Nos. 1, 2, 4, R-172a, 173a). Petitioners maintain their terminal and platform facilities at the rear of the Reading Railroad Freight Station, in Harrisburg, Pennsylvania. Petitioners' activities include the handling of freight in the course of its transportation in interstate commerce. (Finding of Fact No. 5, R-173a). Petitioners employ twenty-four persons as truck drivers, helpers, and platform men to perform the duties incident to its service. (Finding of Fact No. 8, R. 173a).

Respondent, Teamsters, Chauffeurs & Helpers, Local Union No. 776, (hereinafter referred to as Union) is a labor organization, the members of which are engaged as truck drivers and helpers in the same freight trucking industry in which Central is also engaged. (Findings of Fact Nos. 6 and 7, R-173a).

The Union has for some period of time attempted to organize Petitioners' employees. For a period of at least the past ten years no attempt has been made by the Union to contact the Employer for organizational purposes. [1] (Findings of Fact No. 10, 20, R-173a, 176a, 177a).

---

[1] About ten years prior to this action, Kline, the Union representative, testified (and was uncontradicted) that Garner refused him the right to talk to the employees and to meet with them at the terminal, and in fact, when he addressed such request to the employer, was ordered off the property. (R-149a, 150a) However, four employees of Petitioner

Statement

Against this backdrop of the historical relationship of the parties, the Union, during the latter part of May, 1949, undertook the organization of truck drivers and helpers employed by a number of drayage firms in Harrisburg, including Petitioners. At that time the Union held collective bargaining contracts with a number of motor freight carriers in the area and such contracts, pursuant to the policy of the Union, provided with reference to union membership, that such membership was required only thirty days after their employment, and that was pursuant to a certification issued by the National Labor Relations Board following a union-shop election conducted by that agency. (Finding of Fact No. 33, R-178a).

Preparatory to its organizational activities, the Union, on June 1, 1949, sent a letter to a number of Teamster Local

---

joined and still continue to be Union members. They do not attend meetings nor do they ever come to the Union Hall. (R-194a) Kline investigated the condition which obtained among the employees at Petitioners with regard to [illegible] membership (R-194a) but the trial court refused to admit the results of the investigation in evidence in this case. (R-214a, 195a, 196a)

Respondents offered to prove that this investigation disclosed that the employees advised Kline, the Union representative, that they did not wish to talk or be seen talking to him because it would embarrass their relationship with their employer because the employer was hostile to the organization. (R-195a) The evidence thus offered was particularly relevant in the light of Joseph Garner's testimony that he "wouldn't have any objection" to his employees joining a union. (R-40a) It also corroborated Kline's testimony that he contacted Petitioners' employees at other terminals and on the street and they would not disclose their names or talk to him. (R-188a, 189a) Had the offer of proof been allowed and had credible evidence been admitted pursuant to the offer, Findings of Fact No. 11 (R-173a) to the effect that Petitioners have not directly or indirectly put pressure on its employees to * * * *refrain* from joining a labor organization or to * * * *refrain* from engaging in concerted activities for the purposes of collective bargaining, and Finding of Fact No. 13 (R-173a) to the effect that Petitioners did not object to its employees joining the Union might not possibly have been entered in this case. (Italics supplied)

Unions in the adjoining communities in which it advised these other affiliates that:

"This Local Union is engaging in an organizing campaign the object of which is to enroll among our membership the truckdrivers, helpers or warehousemen employed by a number of local dray and freight carriers such as * * * Central Storage and Transfer, * * *

"Our program is limited to an appeal to the employees of these and similar companies to join our Local Union. It is our intention to advertise this appeal by the use of pickets at the places of employment involved.

"In accordance with our usual practice we are bringing this to your attention. Since this will not create the usual strike situation, we are particularly anxious that you will not misunderstand the extent, object and purpose of our program and activities. It is limited strictly to that described in this letter. * * * we are, in view of the program limiting our activities to an appeal to the employees at their place of employment, and accordingly must request that your Local Union refrain from any activity in connection with these companies, and their employees in order that no one may misconstrue our objects and purposes." (Finding of Fact No. 15, R-173a, 174a.)

No other communication took place between Respondent Union and the other Teamster Local Unions.

On June 7, 1949, two persons,[2] neither of whom were employees of Petitioners, commenced picketing at the entrance to Petitioners' terminal carrying signs bearing the legend that:

---

[2] The undisputed testimony established that the pickets were members of the Union. (R. 75a).

Statement

"Local 776 Teamsters Union (A.F.L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions." (Finding of Fact No. 16, R-174a).

During the morning of the first day of the picketing Joseph Garner inquired of the Union representative as to the reason for the picketing and was advised that "This is a means of advertising * * * we are simply doing this to try to sell the men to join the Union." (Finding of Fact No. 19, R-175a).

The trial court found as a fact that the Union did not picket or *in any other way* attempt to coerce neutral employers from transporting freight to and from Central's terminal (Finding of Fact No. 28, R-177a), nor did it induce or encourage concerted action by the employees of neutral employers to refuse to transport freight to and from Petitioners' terminal. (Finding of Fact No. 29, R-177a).

The Union at no time threatened, either directly or indirectly, to picket Petitioners' terminal if it did not compel its non-union employees to join the Union nor did the Union make demand upon Petitioners that it discharge these employees and hire union members in their place. (Finding of Fact No. 27, R-177a).

The picketing, which continued for the brief period of nine days, was at all times conducted in an orderly and peaceful manner. (Finding of Fact No. 17, R-174a).

The Union did not request recognition as the bargaining agent for Petitioners' employees and no question of representation was raised. (Finding of Facts Nos. 13, 26, R-176a, 177a, 173a).

On June 9, 1949, Petitioners sought an injunction to restrain the picketing in the Court of Common Pleas of

Dauphin County, Pennsylvania.[3] The trial court, after preliminary hearing, and on June 17, 1949, entered a preliminary injunction restraining the Union, without qualification or limitation, from all picketing (R-1a, 6a, 102a, 193a). No money damages was awarded in this case.

The Petitioners sought the injunction on the sole ground that the Union had "engaged in a course of conduct intended and calculated to coerce the plaintiff to compel or otherwise require its employees to become members of or otherwise join the said union" (Complaint, Paragraph 10, R-5a, 6a). This allegation was an essential statutory condition to the authority of the court to enter an injunction (Labor Anti-Injunction Act, June 2, 1937, P.L. 1198, Section 4 (b) and (c), 43 PS 206d). Appendix B, *infra*, pp. 66-67.

The lower court made a conclusionary finding to that effect in support of the order. (R-102a)

Respondent filed exceptions to this order which remained undisposed of for six months, and were then dismissed at the Respondents' request (R-110a).

The matter did not receive its final hearing until more than a year after the entry of the temporary injunction, and then only after Respondents had filed a formal motion requesting the same (R-110a, 111a). Even then, the trial court, after a brief hearing of less than an hour, granted Petitioners' request for a further continuance[4] and Respondents were compelled to file a formal petition to conclude the final hearings (R-135a, 136a).

---

[3] Petitioners, on June 10, 1949, also filed charges with the Pennsylvania State Labor Relations Board against Respondent Union, alleging substantially the same matters as were set forth in the Bill of Complaint. This action was not pursued by Petitioners. The State Board unlike the National Board does not investigate and litigate charges. Such action is the responsibility of the charging party. (R-37a, 51a)

[4] Petitioners offered no witnesses or testimony at the final hearing. Counsel for Petitioners, asked leave to have the testimony transcribed

Statement

Finally, and almost three years after the preliminary injunction was entered, the lower court entered its final decree barring the Union from all picketing for any purpose whatsoever (R-2a, 3a, 228a).

Respondents promptly filed and perfected their appeal in the Supreme Court of Pennsylvania, which court, after hearing argument, entered their opinion on February 13, 1953. The Supreme Court of Pennsylvania (speaking through Mr. Chief Justice Stern and with Mr. Justice Bell dissenting) although taking cognizance of the Respondent Union's contention that the *evidence* established that they were engaged in a constitutionally protected activity by stating that "If such was indeed the fact the picketing was constitutionally protected and should not have been enjoined" (R-231) determined that since "plaintiff employers were engaged in interstate commerce, and the *charge* made by them was that the defendant Union was engaged in an activity which was unlawful under the law of the State but which also constituted an unfair labor practice under the provisions of the Labor Management Relations Act, and since that act provides an adequate and complete administrative remedy to prevent the continuance of such activity *if the charge be substantiated*, the Court of Common Pleas of Dauphin County had no jurisdiction to issue an injunction in this case * * *" (R-238)

Thus, almost four years after the brief episode of picketing presented by this case was completely restrained, it was determined that the state court had no authority over the matters here involved.

---

for a future hearing in the case in order that they would "have a chance to study the witness' testimony as to his interpretation of the By-Laws and what the policies of his organization are." (R-131a) The trial court granted this request over the objection of Union counsel. (R-134a) Petitioners' counsel had obtained a copy of the By-Laws at the hearing on June 13, 1949. (R-95a, 131a)

ARGUMENT

Summary of Argument

A state court has no authority to issue an injunction against Union activities on grounds which are the same as those denominated as unfair labor practices under Section 8 (b) (2) of the Labor-Management Relations Act, 1947.

This proposition is controlling in the instant case because the state court's authority to issue the injunction was regulated by a state statute which, insofar as is relevant to this matter, restricted the power of the court to issue injunctions to cases where the union activity constituted an unfair labor practice under the Federal statute.

Thus, where as here, Petitioners invoked the equity power of the state court by a complaint based on a conclusionary allegation consisting of the same words as the state statute prescribed for the state court's injunctive power, and the language of the state statute has been construed by the highest court of the state to mean and relate to the "identical grievance" covered by Section 8 (b) (2) of the Federal statute, it is clear that the state court is without power to act in the matter. This conclusion becomes more inescapable upon closer examination of the state statute which demonstrates that the only power the state court could possibly have in the circumstances would of necessity be derived from and is dependent upon the Federal Act.

Petitioners cannot escape the consequences of the rule of preemption by their contention that their resort to the state courts was to obtain redress against an encroachment upon a so-called "private" right. No "private" right is in-

volved in this particular case, and, even if Petitioners have some kind of a "private" right with respect to the Union's activity, no such right has been pleaded and is not cognizable in these proceedings. The only rights of Petitioners which may be involved here are those "public" rights created by Congress in the Federal statute which was enacted in the "public" interest. This is reinforced by the further fact that Petitioners' admission to the state courts was dependent upon a state statute enacted pursuant to the public policy of the state and their eligibility for relief depended solely on rights created by the Federal Act. The remedy prescribed by the Federal Act in vindication of the rights claimed by Petitioners and protected by the Federal Act has been examined by the highest court of the state and found to be comprehensive, complete and adequate.

In any event, Petitioners were not entitled to an injunction in a state court to restrain the Union's activity in this case. The undisputed evidence in this case clearly establishes that the Union's activity consisted solely of peaceful picketing for organizational purposes. Such is "protected" activity under Section 7 of the Federal Act, the interference with which by Petitioners, by the application to the state court for its restraint, was an unfair labor practice under Section 8(a) (1) of the Act. However, the lack of authority of the state court in this case is not dependent upon a judicial determination in these proceedings that the Union was engaged in "protected" activity but flows from the possible presence of such protected rights and the correlative prohibitions which are within the exclusive province of the National Board to investigate and decide. Furthermore, even were the Board to decide that the Union's activity was not protected within the purview of Section 7, it was nevertheless free from state regulation because

Congress considered a proposal for the regulation of such activity and rejected it.

Whether this Court considers this case solely on the complaint, as did the Supreme Court of Pennsylvania, or upon the undisputed evidence, the absence of state authority is equally clear. The complaint shows on its face that Petitioners sought an injunction on a particular matter for which Congress has provided a specific regulation. Thus, the state court's authority is ousted under the principles enunciated by this Court in *Hill v. Florida*, 325 U. S. 538; *Plankinton Packing Co. v. Wisconsin Board*, 338 U. S. 953; *Amalgamated Association v. Wisconsin Board*, 340 U. S. 383; and, *International Union v. O'Brien*, 339 U. S. 454. The evidence establishes that this case relates exclusively to the particular matters and relationships which Congress authorized the National Board to pass upon and regulate. Consequently, the state court's authority is ousted under the principles enunciated in *Bethlehem Steel Co. v. N. Y. S. L. R. B.*, 330 U. S. 767 and *LaCrosse Telephone Corp. v. Wisconsin Board*, 336 U. S. 18. Furthermore, since Congress considered a proposal for the regulation of the particular matters which are present here and rejected it, the state cannot act. *Amalgamated Association v. Wisconsin Board*, *supra*, and *International Union v. O'Brien*, *supra*.

The authorities cited by Petitioners in support of their position are inapplicable to the circumstances of the instant case. This Court has limited state authority over Union activities in the field of labor relations to the regulation of "conduct" as distinguished from "purpose" or "object," the traditional local police measures which are a necessary part of the law enforcement mechanism of our society irrespective and independent of the field of labor relations, and to areas delegated or permitted to the states by explicit Congressional authority *United Auto Workers v. Wisconsin*

Board, 336 U. S. 245; *Allen Bradley Local v. Wisconsin Board*, 315 U. S. 740; *Algoma Plywood and Veneer Co. v. Wisconsin Board*, 336 U. S. 301. No such situation is presented by the case here on review.

Nor does the legislative history of the Federal Act provide support for Petitioners' position. An accurate and complete examination of the Congressional action on the statute and the pattern of regulation embodied in the Act clearly establish that the procedures provided for therein are both complete and exclusive of state authority as to the matters involved in the present action. Furthermore, Section 10 (a) instead of permitting state authority clearly precludes it in the circumstances of this case. Congress was extremely conscious of the pre-emptive character of this particular legislation and was aware that the broad grant of power to the Board in Section 10 (a) preempted the field covered by the Act. The deletion of the word "exclusive" from this provision by the 1947 amendment was accentuated by the pattern of supplementary proceedings established by the amended Act and did not affect the pre-existing exclusive character of the Board's powers and authority. The legislative history clearly demonstrates that the deletion of the word "exclusive" was necessary because of the new provisions authorizing temporary injunctions at the instance of the Board to restrain certain unfair labor practices and the provisions which made unions liable for money damages under Section 303 arising out of conduct proscribed by Section 8 (b) (4). In any event the fact that Congress considered and rejected a proposal which would have provided private parties with the remedy of injunction to restrain unfair labor practices is conclusive on this point.

The instant case dramatically illustrates the chaos that would be wrought upon the national policy as expressed by Congress in the Labor-Management Relations Act, 1947, if

Argument

Argument

POINT I

The State Court is Without Authority to Enjoin a Union on Charges Which Union Says It Believed Prohibited by the Labor-Management Relations Act, 1947, at the Request of an Employer Which Contends in Good Faith Otherwise, and Such Employer Has No Rights With Respect to Such Conduct Other Than Those Which Are Justiciable Under the Federal Statute.

At the outset it is important to note that Petitioners concede that the Union conduct complained of constituted, as the Supreme Court of Pennsylvania held, a violation of Section 8(b) (2) of the Labor-Management Relations Act of 1947. (Petitioners' Brief, pp. 15, 36). Petitioners further concede that only the National Labor Relations Board has authority to vindicate the conduct complained of as an unfair labor practice.[1] Petitioners' fundamental contention, (which they raise for the first time) however, is that they have some kind of independent "private right" cognizable in the state courts, to enjoin the identical conduct, and that they resorted to the state court for that reason.

The fact is, however, as we shall now demonstrate, that the state statute through which Petitioners sought relief—and the only statute through which they could get relief—dealt with the very same rights as those which are the subject of the Federal statute.

The policies of the Commonwealth of Pennsylvania in the field of labor relations have been established by the General Assembly and have been given full expression in two

[1] No charge however was ever filed by Petitioners with the National Labor Relations Board and so the matter was never processed by that Board.

Argument

[illegible] The first such statute to be enacted was the [illegible] Act approved June 1, 1937, [illegible] The second statute [illegible] Act approved June 2, 1937, [illegible]

[illegible] expressly based [illegible] on the Wagner Act and was [illegible] and unfair [illegible] practices [illegible] its provisions [illegible] with those prescribed by [illegible] two years earlier.[1]

[illegible] Act, supra, rested upon the [illegible] the Norris-LaGuardia Act, and its [illegible]

[illegible] the Pennsylvania legislature [illegible] through which it sought to implement [illegible] Labor Relations Act was changed [illegible] unfair labor practices, some of [illegible] pertinent to the case here we review. The Anti-Injunction Act, supra, was enacted at the same time (June 2, 1932); both of these enactments are pertinent here. They provide that the procedural inhibitions of the Act shall not apply to cases

> "(3) Where a majority of the employes here not joined a labor organization * * *" and such "labor organization * * * engages in a course of conduct intended or calculated to coerce an employer to compel or require his employes to prefer to become members of * * * any labor organization;" or "(c) Where any * * * labor organization engages in a course of conduct intended

[1] See Appendix A, pp. 57-61 inc., setting forth all relevant portions of this statute discussed.

[2] See Appendix B, pp. 62-71 inc., setting forth all relevant portions of this statute discussed.

or calculated to coerce an employer to commit a violation of the Pennsylvania Labor Relations Act of 1937 or the National Labor Relations Act of 1935; * * *"

The boundary limits of the exceptions to the Labor Anti-Injunction Act, *supra*, (which are relevant to the issues in this case) have been fully explored by the state courts and are now clearly plotted. In *Wilson* v. *Chester Hotel Union*, 360 Pa. 45, and again in *Phillips & Cornell* v. *United Brotherhood of Carpenters*, 360 Pa. 75, the plaintiffs sought to enjoin defendants in proceedings free from the fetters of the Act, in a court of equity under the exception provided for in subsection (b) to Section 4 of the Act. The Pennsylvania Supreme Court held in both of these cases that such situations was within the purview of the exception provided for in subsection (c) of Section 4, which removes the restrictions of the Act from "conduct intended or calculated to coerce an employer to commit a violation" of the Pennsylvania or National Labor Relations Acts. This construction was reiterated by the Pennsylvania Supreme Court in the case here on review (R-232).

The Supreme Court of Pennsylvania, in considering the source of the power of the State Courts to issue injunctions in cases involving the exceptions prescribed by subsections (b) and (c) of the Labor Anti-Injunction Act, *supra*, did not find it among the "unfair labor practices" of unions proscribed by the State Labor Relations Act but upon a judicially declared policy derived from the purpose to require an employer to commit an unfair labor practice.*

* In the instant case, Chief Justice Stern stated: "Thus it will be seen that the Act of Congress prohibits the same activity on the part of a labor organization in this respect as does the Pennsylvania Labor Relations Act, the only difference being that the Federal act would stamp this picketing as an unfair labor practice, whereas the State act does not so list it but our courts have declared it unlawful because aimed to coerce the employer into committing what the Act does declare to be an unfair labor practice on his part." R-232.

Argument

Thus, in the instant case where Petitioners are engaged in interstate commerce the power of the state court must be found upon that portion of subsection (c) of Section 4 of the Act in which it is vested with authority to investigate and find that Respondents' conduct would require Petitioners to violate the National Labor Relations Act. The source of the court's authority, if it exists at all, is found in the legislative delegation [illegible] to apply state sanctions to certain violations of the Labor-Management Relations Act of 1947. The violations as alleged in Petitioners' complaint[6] in this case related to conduct which constituted an unfair labor practice within the terms of Section 8(b)(2) of the Federal Act.[7]

Petitioners, in the case at issue, recognize, acknowledge and accept the proposition that they based their claim for equitable relief upon an allegation which by its terms constituted a violation of Section 8(b)(2) of the Federal statute. The Supreme Court of Pennsylvania construed the state statute (under which Petitioners sought relief) as dealing with "the identical grievance" (R-236) which Con-

---

[5] The Supreme Court of Pennsylvania also determined the extent to which the legislatively declared policies in the field of labor relations should be exercised by the Pennsylvania Labor Relations Board in the parallel and inter-related area covered by the Pennsylvania Labor Relations Act, supra. In the case of Pennsylvania Labor Relations Board v. Frank, 362 Pa. 537, 67 A 2d 78, where an employer's business was in or affected interstate commerce, the court held that since the employer's alleged unfair labor practice was prohibited by the federal statute "the State Board was without jurisdiction to act * * *" (R-235).

[6] The allegation in Paragraph 10 of the complaint was the 'sine qua non' of the state court's jurisdiction.

[7] See Footnote 4 above. The Supreme Court of Pennsylvania also concluded by repeating: "* * * and the charge made by them was that the defendant Union was engaged in an activity which was unlawful under the law of the State but also constituted an unfair labor practice under the provisions of the Labor Management Relations Act * * *" (R-238).

grees regulated in Section 8(b) (2); in other words, the same grievance which Congress proscribed in the public interest. This determination by the State Court as to the "identical" quality of the grievance with that which has its source in the Federal statute is a binding decision as to the nature of the rights dealt with in the state statute. *Senn v. Tile Layers Union*, 301 U.S. 468; *Hotel & Restaurant Employees v. Wisconsin Board*, 315 U.S. 437.

Furthermore, Petitioners, throughout their lengthy brief, fail to—no doubt because they cannot—support their naked assertion that the rights which they claim are "private" in nature. Petitioners supply no concept of the term "private right" which affords any assistance toward an understanding of this contention. Investigation as to the use of the term in the field of the law accentuates its ambiguity when considered in the frame of reference of this particular case. It has been described as "A term which cannot be defined further than to say that it includes all those duties due from one person to another for the breach of which the law gives an action" 72 C.J.S. 915. The courts have defined it variously as, "* * * such rights when applied to property, as persons may possess unconnected with, and not essentially affecting, the public interest, or growing out of a public institution of society" Rugh v. Ottenheimer, 6 Ore. 231, 237, 25 Am. Rep. 513); "* * * those (rights) which the inhabitants of a local district enjoy exclusively, and the public has no interest therein" (Savoie v. Town of Bourbonnais, 239 Ill. App. 551, 90 N.E. 2d 645, 649; See also, Village of Hartford v. First National Bank, 307 Ill. App. 447, 30 N.E. 2d 524, 527; Rhobidas v. Concord, 70 N. H. 90, 116, 51 LRA 381).

Furthermore, even if it were to be assumed that Petitioners had some kind of "private" right they would not be entitled to the injunctive relief sought in these proceedings.

The Supreme Court of Pennsylvania has determined that the state Anti-Injunction Act under which relief was sought by Petitioners deals not with rights but with "the particular remedy of injunction." *Alliance Auto Service, Inc. v. Cohen*, 341 Pa. 253. (Italics supplied) Hence, Petitioners' real problem in this case is not the establishment of his "right," but rather, the demonstration of the availability of a specific remedy in a particular forum. The non-availability of the precise remedy in the particular tribunal has been conclusively denied to Petitioners by the construction placed on the state statute prescribing such remedy by the highest court of the state.[8]

In sum, Petitioners have utterly failed to establish that the state statute deals with "private" as distinguished from "public" rights; or, that the particular right claimed by them is indeed "private"; or, that even if it were "private," a remedy by injunction was available to them under the state law.

POINT II

The State Court Had No Authority to Issue an Injunction in This Case Because the Union Activity Complained of Was Regulated and Prescribed by Congress, and the Activity which the Union Actually Engaged in Was Either Protected by Section 7 of the Federal Act or Was Freed From Regulation Other Than by the National Board, or Was Nevertheless Left Free From State Regulation.

---

[8] In addition to its determination that the regulation of the conduct complained of by Congress constituted "preemption" the Supreme Court of Pennsylvania held that the remedy prescribed by the federal statute was "adequate and complete." R-238. This removes any basis for a claim for equitable relief at least prior to exhaustion of such statutory remedies. *Pennsylvania Rules of Civil Procedure*, Rule 1509 (b).

Argument

A. The general rules relation to preemption which this Court has laid down with respect to the field of labor relations requires affirmance of the Supreme Court of Pennsylvania.

The Supreme Court of Pennsylvania considered the "problem" presented by this case to be whether, under the circumstances, the Federal statute "constituted an absolute and complete preemption of the field so as to preclude State action" (R-232). Upon an examination of the State and Federal statutes, the allegations of the complaint, and the principles of preemption as laid down by this Court, it determined that the State Court was without jurisdiction over this particular cause of action (R-238). In the light of the provisions of the state statute, as has been established above, and the pattern of regulation[9] adopted by Congress for the field of labor relations, it will be demonstrated that the decision of the state Supreme Court is correct.

The question of the relationship between Federal and State law in the field of labor-management relations is not a new one. By this time it has been passed upon by this Court on many occasions. From these decisions a number of clear-cut principles have emerged, which can be briefly summarized.

The states have been excluded from regulating or applying state remedies where:

(a) Congress has provided a specific regulation relating to the particular matter or affecting the particular relationship (*Hill v. Florida*, 325 U.S. 538; *Plankinton Packing Co. v. Wisconsin Board*, 338 U.S. 953; *Amalgamated Association v. Wisconsin Board*, 340 U.S. 383; and, *International Union v. O'Brien*, 339 U.S. 454);

---

[9] See Appendix C, pp. 72-74 inc., setting forth the pattern of regulation.

(b) Congress has authorized the Board to regulate or pass upon a particular matter or relationship, whether the Board has actually acted on such authority *(Bethlehem Steel Co. v. N.Y.S.L.R.B.*, 330 U.S. 767) or has not *(La-Crosse Telephone Corp. v. Wisconsin Board*, 336 U.S. 18);

(c) Congress has considered the regulation of a particular matter or relationship, and has rejected it either in whole or in part *(Amalgamated Association v. Wisconsin Board, supra*, and, *International Union v. O'Brien, supra)*.

A restricted area for state regulation survives, limited to the following situations:

(d) Congress has specifically delegated authority to the states to regulate certain particular matters *(Algoma Plywood and Veneer Co. v. Wisconsin Board*, 336 U.S. 309).

(e) Union conduct or tactics as distinguished from purpose or object under certain circumstances *(Allen-Bradley Local v. Wisconsin Board*, 315 U.S. 740; *United Auto Workers v. Wisconsin Board (Briggs-Stratton case)* 336 U.S. 245.

The application of the foregoing principles to the instant case clearly requires affirmance of the decision of the court below. For, as shall be demonstrated, the conduct complained of and claimed to be unlawful, has already been regulated and proscribed by Congress in the Federal Act. Furthermore, as shall be shown, the actual conduct engaged in by Respondent Union was not unlawful; rather, (a) it was either protected by Section 7; or, (b) the question whether it was protected by Section 7 was exclusively for the Board; or, (c) even if it was outside the protection of Section 7, Congress left it free from regulation by the states.

B. The conduct complained of and claimed to be unlawful has already been regulated and proscribed by Congress

Argument

Petitioners, in their effort to obtain relief through the State Court, filed a complaint which, at the 10th paragraph, set forth a conclusionary allegation in the words of the State Statute. The Supreme Court of Pennsylvania has determined that such grievance is the same as the unfair labor practice within the purview of Section 8(b) (2) of the Federal Act.[10]

The basis of the construction which the Pennsylvania Supreme Court placed upon subsections (b) and (c) of Section 4 of the State Anti-Injunction Act, *supra*, and upon the Petitioner's allegation in Paragraph 10 of the Complaint is demonstrated by their comparison with Section 8(b) (2) of the Federal Act.[11]

Subsection (b) of Section 4 of the State Anti-Injunction Act and the conclusionary averments in Paragraph 10 of Petitioners' Complaint may also relate to the same activity which Congress prohibited by Section 8(b) (1) (A) of the Federal Act. That particular provision declares that it shall be an unfair labor practice for a union "(1) to restrain

---

[10] Such juridical construction is conclusive on this appeal. Petitioners concede that the grounds upon which they relied (and which the state statute prescribed) to obtain relief in the state court described a violation of Section 8 (b) (2) of the Federal Act. Petitioners' Brief (p 15) states: "At the same time Section 8 (b) (2) empowered the National Labor Relations Board *to prevent the same conduct* for the public purpose of protecting the free flow of interstate commerce." (Italics supplied.)

[11] See N.L.R.B. v. National Maritime Union (C.A. 2) 175 F 2d 686; In re: American Radio Ass'n, 82 NLRB No. 151, 24 LRRM 1106, 1007; In re: United Mine Workers of America, 83 NLRB No. 185, 24 LRRM 1153; In re: Denver Building Trades Council, 90 NLRB No. 224, 26 LRRM 1502; In re: Mackay Radio & Telegraph Co., 90 NLRB No. 106 26 LRRM, 1579: In re: Medford Building Trades Council, 90 NLRB No. 10, 28 LRRM 1495. See also, House Conference Report No. 510, on H. R. 3020 (80th Cong. 1st sess.) pp. 43-44 which points out that the Senate amendment (as embodied in Section 8 (b) (2) was much broader than the House proposal and spells out its coverage so as to include the matters described in the conclusionary allegation in Paragraph 10 of the Complaint.

or coerce (A) employees in the exercise of the rights guaranteed in section 7" and one of the rights guaranteed employees by section 7 is the "right to refrain from any or all such activities." This construction is supported by the decision in the case of *Direct Transit Lines, Inc. v. Teamsters Union, (U.S.D.C. Mich.)*, 29 LRRM 2402, aff'd (C.A. 6) 199 F 2d 89. See also, *Capital Service, Inc. v. N.L.R.B.* (C. A. 9) 204 F 2d 848.

Thus, since the complaint, upon which Petitioners must of necessity rely for relief, depends upon an allegation which is squarely within the purview of the specific terms of the Federal Statute, this case presents an intrusion upon the "ambit of regulation" undertaken by Congress which permits of no survival of state authority. *Hill v. Florida, supra.* In point of fact, the offensive element of the conduct charged against the Union in the instant case is the same as that which was the basis for the cause of action in the *Plankinton* case, *supra.*[12]

Just as "congressional imposition of certain restrictions on (the) right to strike * * * shows that Congress has closed

---

[12] This proposition is reinforced by the explanation of the Plankinton case which appears in footnote No. 12 to the opinion of the late Chief Justice Vinson in the Amalgamated Association case, *supra*, wherein it is stated: "* * * Section 7 * * * also guaranteed to individual employees the 'right to refrain from any and all such activities', at least in the absence of a union shop or similar constructural arrangement applicable to the individual. Since the N.L.R.B. was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act occupied this field to the exclusion of state regulation. Plankinton and O'Brien both show that states may not regulate in respect to rights guaranteed by Congress in Section 7."

In that case the union "caused" an employer to discriminate whereas in the case here on review, the union is merely charged with an "attempt to cause" an employer to discriminate. Since Section 8 (b) (2) of the Federal Act has the same prohibition against an "attempt to cause" as it does against the "cause," the rule laid down in the Plankinton case is controlling here.

to state regulation the field of peaceful strikes in industries affecting commerce" (*Amalgamated Association v. Wisconsin Board*, 340 U.S. 304; and *International Union v. O'Brien*, 339 U.S. 457) so can it be stated that Congressional imposition of certain restrictions upon the objectives and purposes of concerted activity by union's and their members, as is specifically illustrated by Section 8(b) (1) (A) and (2), has closed to state regulation the field of union concerted activity in the industry in which Petitioners are engaged.

Indeed, it is not necessary for this Court to hold that the conduct complained of does constitute a violation of Section 8(b) (2) or (1) (A), or both. Even if that question is a marginal one (as we understand is the contention of the Congress for Industrial Organizations in its Amicus Brief) nevertheless the state is barred from acting. For as is shown in this Brief at pp. 30-31, *infra*, Congress has entrusted the determination of that marginal question to the National Board and not to a myriad of state courts all over the country. Any other rule must lead to chaos in the effectuation of the national labor policy.

C. The actual conduct engaged in by Respondent Union was either (a) protected by Section 7, or (b) freed from regulation other than by the National Board.

Thus far this Brief has considered the case, as did the Supreme Court of Pennsylvania, purely upon the allegations of the complaint. Turning, however, to the record and the undisputed evidence, it becomes clear that Respondent Union's conduct was removed from state jurisdiction on broader grounds. For that conduct was either protected by Section 7 or, its protected or unprotected character was exclusively for Board determination; or, if determined to be unprotected, Congress nevertheless left it free from regulation by the states.

(1) The conduct was protected by Section 7.

The evidence in the case at issue, as distinguished from the allegations in Petitioners' complaint, establishes clearly and conclusively that the aid of the state court was being sought in a field from which it had been ousted by Congressional action.

Petitioners are engaged in the transportation of freight by motor vehicle and conduct a pick-up and delivery service for the Reading Railroad Company and its freight trucking division. It also provides interchange and delivery service for other trucking companies. "The federal board has jurisdiction of the industry in which (this) particular (employer is) engaged and has asserted control of their labor relations in general." *Bethlehem Steel Co. v. N.Y.S.L.R.B.*, *supra*, (330 U.S. 776) *Phillips Transfer Co.* 69 NLRB No. 62, 18 LRRM 1231. The Respondent Union's activity consisted solely of an appeal to Petitioners' employees to join the organization by the use of a picket at the Petitioners' terminal[13]

That the sole purpose of the picketing was thus limited was established beyond doubt or cavil. Respondent Union did everything possible to make sure that no one could misunderstand or misconstrue the purpose of its activity.[14]

In short, it is clear that the picketing in this case was purely for organizational purposes and that no finding to

---

[13] This was the one facility of Petitioners where all of their drivers went daily and was their actual place of employment. (R-57a, 60a, 80a)

[14] Respondent Union advised other affiliates of the same International of the limited purpose of the picketing and requested them to "refrain from any activity * * * in order that no one may misconstrue our objects and purposes." (Findings of Fact No. 15, 170a, 174a) It advised the employer that "this is a means of advertising * * * we are simply doing this to try to sell the men to join the Union." (Finding of Fact No. 19, R-175a) The conduct and purpose of the Respondent Union in pursuance of the activity was so unequivocal and free from

the contrary can find support on this record. As such it was "protected" activity under Section 7 of the Federal Act.[18]

History and tradition have firmly established the proposition that picketing is labors' method of communication in furtherance of their economic objectives.[19] Congress in stating the policy for the federal courts through the enactment of the Norris-La Guardia Act (47 Stat. 70, 29 U.S.C. Sec. 101, et seq.) insulated the right of picketing for such purpose from judicial restraint (29 USCA Secs. 102, 104 (a) (c) (f) (i) and 113). Section 7 of the Wagner Act (29 USCA Sec. 157) must be viewed against this background. The legisla-

---

doubt that the trial court was compelled to enter Findings of Fact that "The picketing * * * was at all times conducted in an orderly and peaceful manner;" (No. 17, R-174a) that the Union did not picket or in any other way attempt to coerce neutral employers nor did it induce or encourage concerted action by the employees of neutral employers to refuse to transport freight to and from Petitioners' terminal (No. 26 and 29, R-177a); and, that the Respondent Union at no time threatened, either directly or indirectly, to picket Petitioners if they did not compel their unorganized employees to join the Union, and in fact did not, at any time relevant to the case, directly or indirectly contact Petitioners in an effort to have them recognize it as the bargaining agent for their non-union employees. (Nos. 27 and 28, R-177a, 178a-177a) Any reservation that might yet have remained as to the purpose of the activity must of necessity have been resolved by the finding that Respondent Union's contracts in the freight industry in the area required union membership as a condition of employment only after thirty days of prior employment and pursuant to a certification issued by the National Labor Relations Board as the result of a union-shop election conducted by that agency. (No. 33, R-178a)

The foregoing facts were further reinforced by Finding of Fact No. 32 that no member of Respondent Union could have been penalized by the Union for passing pickets under the circumstances presented by this case. (R-177a, 178a); and by Finding of Fact No. 13, to the effect that at no time did the Union request Petitioners to recognize it. (R-173a)

[18] It was also constitutionally protected as is shown in Point V of this Brief, *infra* pp. 42-46, inc.

[19] Daugherty, *Labor Problems in American History* (Houghton-Mifflin, 1941) p. 487; Stein et al., *Labor Problems in America* (Farrar and Rinehart, 1940) pp. 610, 611.

tive history of the section demonstrates that Congress desired to preserve organizing activities of the same scope as those sanctioned by the Norris-La Guardia Act (79 Cong. Rec. 7570). That such legislative considerations were expressed in the statute becomes indisputable upon comparison of the language of Section 7 of the Wagner Act with Section 2 of the Norris-La Guardia Act.

The 1947 amendment to Section 7 does not affect the range of activities contemplated and protected by the Wagner Act. The addition of the right of employees "to refrain" from concerted activities to the area of Congressional protection cannot impair the scope of the right "to engage" in such activities. The prohibitions prescribed in Section 8(b)(1) and (2) of the amended Act describe the limits within which the right "to refrain" is protected and do not include peaceful picketing for organizational purposes.

Such activity consisting, as it did solely of an appeal to workmen to join the Union, was guaranteed and protected by Section 7 of the federal statute. Protection of the right of union representatives and its members to publish and disseminate information to assist organization[17] as well as "the employees' right to receive such information to enable them to exercise their right to self-organization" is contemplated by and included within the purview of Section 7, in re: *Stowe Spinning Co.*, 70 NLRB, No. 45, 18 LRRM 1056 and *N. L. R. B. v. Stowe Spinning Co.*, 336 U.S. 226, in re:

---

[17] Such right to "organize" was compared with the right to "strike" by this court in the Briggs-Stratton case, supra, and it was there stated by Mr. Justice Jackson that "the right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for the lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act. Labor Board v. Jones & Laughlin, 301 U. S. 1, 33." (336 U. S. 259)

Mobile-Jackson Vending Co., 6 NLRB 125, 2 LRRM 125. See also N. L. R. B. v. Lake Superior Lumber Corp. (C. A. 6) 167 F 2d 147; Humble Oil & Refining Co. v. N. L. R. B. (C. A. 5) 113 F 2d 85; In re: Paragon Die Casting Co., 77 NLRB 878, 7 LRRM 96.

Petitioners, by their successful application for an injunction against such activity in the state court—an injunction which remained in force for nearly four years—interfered with and restrained Respondent Union and its members in the exercise of the rights which were guaranteed them by the federal Act. *Overton Co. v. Teamsters Union* (U.S.D.C. W. D. Mich.) F. Supp. 25 LRRM 2021. Petitioners imposed even greater limitations upon the Union's right to organize than that which was stricken down by this court in Hill v. Florida, *supra*.[2]

Congress, as is demonstrated by the *Overton Case*, *supra*, has not only guaranteed to the unions the right to engage in concerted activity in the form of peaceful appeals to workmen to join their organization, but has also provided affirmative protection for such right by making any interference with its exercise an unfair labor practice.[3] Thus,

---

[2] See Thomas v. Collins, 323 U. S. 516, where a Texas statute similar to the Florida law requiring registration of union organizers as a condition to the right to solicit members was held to interfere with both the Constitutional guarantee and the protection provided for in Section 7. (323 U. S. 532)

[3] It has been held that where an employer applies for and obtains an injunction in a state court which restrains a union from exercising such rights, he is guilty of an unfair labor practice and is subject to the appropriate order of the National Labor Relations Board. In re: Carter & Brothers, 70 NLRB No. 237, 18 LRRM 1267. In this case the Board made the following statement which has limited pertinence to the instant case: "* * * In view of the serious consequences that flow from a violation of a court order, this injunction constitutes to no small degree a correspondingly serious impediment to the free exercise of rights guaranteed by the act * * *" See also, Globe Spinning case, *supra*; and, In re: Weyerhauser Timber Co., 81 NLRB No. 46, 8 LRRM 187; In Re: Brashear Lines, Inc., 13 NLRB 191, 4 LRRM 265.

the Commonwealth was without power to deal with or prohibit the Respondent Union's picketing in this case.

2. The protected or unprotected character of the Union's conduct under Section 7 must be determined by the National Board and not by the State Court.

In the final analysis this case does not present the question whether the Respondent Union's activity was necessarily protected by Section 7 of the Federal Act, any more than it must be determined to be necessarily a violation of Section 8 (b) (1) (A) or 2), or both (see pp. 23-25, *supra*). The controlling issue is whether the circumstances establish the possible presence of protected rights or prohibited activities. That is for the National Board and the Board alone to determine." Regardless of the ultimate conclusion that might be reached by either the Board, or any court on appeal from an order of the Board, the controlling factor is that otherwise "both the state and federal statutes have laid hold of the same relationship" (*La Crosse Telephone* case, *supra*, 336 U. S. 25) creating an intolerable situation. The "potential of conflict" is self-evident.

Congress has empowered the Board and not the state courts to determine whether conduct such as is presented by the record of this case, is protected [illegible] Act. Adjudication by state courts and the issuance of blanket injunction orders frustrate the Federal policy. Cf. *Alabama and U. Boy.* v.,

---

[illegible] In the case of Sommer, etc., et al. v. Metal Trades Council Cal. 254 P 2d 569, Justice Carter dissenting (with Gibson Ch J. and Traynor, J.) in the well-reasoned minority opinion declares: "That discussion means that in cases such as this (ie., a controversy as to whether the activity is protected by Section 7 or prohibited by Section 8 (b) it rests with the Board to determine, at least at this stage of the proceeding, whether an unfair labor practice has been committed and to take such action as it deems advisable. This Court cannot, therefore, be concerned with the question of whether in fact there have been unfair labor practices committed." (254 P 2d 571)

Jackson & S. Ry., 271 U. S. 244. In any event, "state regulation in the field [covered by Section 7 of the Federal Act] must be declared invalid even though that particular phase of the subject matter has not been taken up by the federal agency." *Napier v. Atlantic Coast Line R. Co.*, 272 U. S. 605, and the *Bethlehem Steel Co.* case, *supra*, (226 U. S. 774). As was explained by this Court in *Amalgamated Association v. Wisconsin Board*, *supra*, the Florida case demonstrated that Congress occupied the field of rights guaranteed employes by Section 7 "to the exclusion of State regulation," (340 U. S. 380-381). Such "occupation of the field" does not depend upon the interpretation which opposing counsel may place upon the evidence in this case or even upon the conclusions which this Court might feel impelled to reach from such evidence." The delegation of power effects the occupancy of the field.

2. Even were the Board to determine that the Union's organizational picketing was unprotected under Section 7, Congress nevertheless left it free from state regulation.

The will of Congress "is to be discovered as well by what the legislature has not declared, as by what they have expressed." *Houston v. Moore* 5 Wheat 1, 20-22.

The Congressional intention with respect to organizational picketing is established by the legislative history.

On April 11, 1947, the House Labor Committee reported out a Bill (H. R. 3020), which would have made unlawful the very activities affecting commerce of which Petitioners

---

[11] It exists as stated in the *Briggs-Stratton* case, *supra*, "because of the Act of Congress which made an "express *delegation of power* to the Board to permit or forbid this particular union conduct, from which an exclusion of state power [can] be implied." (Italics supplied) (336 U. S. 255)

complete.[23] The Bill defined a list of activities which, "when affecting commerce, shall be unlawful concerted activities" (Sec. 13 (a), and in that category included (1 Leg. Hist. *supra* 77-79):

"Sec. 13 (a) * * *

(3) Picketing an employer's premises for the purpose of leading persons to believe that there exists a labor dispute involving such employer, *in any case in which the employees are not involved in a labor dispute with their employer*.

(5) Calling, authorizing, engaging in, or assisting * * *

C. Any * * * concerted interference with an employer's operations, an object of which is (i) to compel an employer to recognize for collective bargaining a representative not certified under Section 9 * * * or (iii) *to compel an employer to violate any law*."[24]

The Bill provided that private parties injured by any of these unlawful acts could sue for damages and injunctive relief, and that those found to have engaged in such activities "shall be subject to deprivation of rights under this Act to the same extent as a person found to have engaged in an unfair labor practice."[25] Furthermore, the Bill provided that any combination by labor unions, for the purpose, *inter alia*, of engaging "in any concerted activity declared to be unlawful under Section 12," and shall be deemed in

---

[23] As described by a minority of the Committee, the provisions of the Bill were "so drastic as to make virtually every strike illegal." H. Minority Rep. No. 245, 80th Cong., 1st sess., p. 386, in Vol. 1, Leg. Hist. *supra* 336.

[24] The italized portions are in effect the gravamen of Petitioners' position.

[25] Secs. 12 (b), (c) and (d), in 1 Leg. Hist. *supra* 79-80.

restraint of trade and subject to the civil and criminal penalties of the Sherman Act.[28]

These provisions, had they become law, would have achieved the same result as Petitioners sought through their suit. Since here, as Petitioners' complaint alleges in paragraph 4 (R-5a), the employees of Petitioners did not have a labor dispute with Petitioners', the Union's, picketing would fall under Section 12 (a) (2) of the proposed Bill. Since paragraph 10 of the complaint charges that the Union's picketing activities seek to compel Petitioners to coerce their employees into joining the Union, a violation of federal law, such activities would come within Section 12 (a) (3) of the proposed Bill. Accordingly, Petitioners would have been entitled to an injunction against, and damages on account of, all such picketing.

However, the provisions discussed did not become law. Instead of flatly prohibiting such picketing and enacting sweeping prohibitions against it, Congress carefully considered the entire field of picketing and boycotting and ultimately decided that the better procedure was to prescribe a limited number of unlawful acts [Section 8 (b)].

That the Labor-Management Relations Act, 1947, contemplates stranger picketing and its legality in labor-management disputes is also clear from Section 2 (9) of the Act [29 U. S. C. A. Section 152 (9)] which defines "labor dispute." Thus, the term labor dispute, "includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, *regardless of whether the disputants stand in the proximate relation of employer and employe.*" (Italics supplied.)

---

[28] Secs. 301 (a) and (b) in 1 Leg. Hist. *supra* 92-94.

In addition to narrowing drastically the kinds of activity to be prohibited, Congress also rejected the remedies provided by the Bills, reported by the House Committee. After much discussion, it was decided to withhold from private parties the right to obtain injunctive relief against the proscribed activities.[36]

We believe this establishes that, whether or not organizational picketing be found by the Board to be "protected" by Section 7,[37] such activity at least was determined by Congress to be free of prohibition or regulation or regulation by either the Federal or State authority.[38] *O'Brien and Amalgamated Association cases, supra,* (338 U.S. 453, 340 U.S. 394, 395).

Subsequent to the enactment of the Labor-Management Relation Act of 1947, Congress considered the imposition of restraint upon activities such as those complained of by Petitions, and reiterated its determination that these activities be free from regulation.

---

[36] 93 Cong. Rec. *passim*, 4846-4847. See also 2 Leg. Hist. 1323-1324, 1346-1370.

[37] See Hamilton's Ltd., 83 NLRB No. 133, 37 LRRM 1538; and, Smith's Hardware Co., 83 NLRB No. 187, 37 LRRM 1554, where the Board approved the right of a minority union to engage in peaceful picketing for organizational purposes notwithstanding its disclaimer of interest in a representation proceeding before the Board.

[38] The debate on Section 8 (b) (1) in the Senate further supports the conclusion that the activity here involved was not intended to be prohibited by the Act. Senator Taft, in the course of his reply to Senator Morse's objections that the proposal would "have the effect of outlawing organizational strikes" (Vol. 2, Leg. History of Labor Management Relations Act of 1947, p. 1197) stated: "Mr. President, I can see nothing in the pending measure which * * * would in some way outlaw strikes. It would outlaw threats against employees. *It would not outlaw anybody striking who wanted to strike. It would not prevent anyone using the strike in a legitimate way, conducting peaceful picketing, or employing persuasion.* All it would do would be to outlaw such restraint and coercion as would prevent people from going to work if they wished to go to work." (Vol. 2, Leg. Hist. p. 1207)

Argument

In accordance with the intention expressed in Title IV of the Labor-Management Relations Act of keeping a continued watch on the field covered by the Act, committees of Congress, subsequent to the enactment of the law, have made further studies to determine whether the law required amendment. Thus, on December 31, 1948, Congress through its Watchdog Committee reviewed the policy and operation of the Act. This Committee, in reviewing the legislative history of the Act, reported (S. Rep. 986, Part 3, 80th Congress, 2nd sess.):

"Proposals to regulate strikes conducted for the purpose of compelling employers to violate Federal and other laws were considered by the Eightieth Congress during the time the present act was being formulated. The bill as passed by the House (H. R. 3020, 80th Cong. 1st sess.) provided that a strike for recognition or to remedy practices for which an administrative remedy is available under the act or to compel an employer to violate any law shall be unlawful. As remedies for unlawful practices, it allowed a suit for damages, made provisions of the Norris-La Guardia Act inapplicable, and deprived any person who engaged in such a strike of his rights under the act for a period not exceeding one year.

"An early committee print of the Senate Bill (S. 1126, 80th Cong. 1st Sess.) contained a provision which would have denied the benefits of the act to any employee or labor organization which conducted a strike to compel an employer to remedy practices for which an administrative remedy was available under the act, or to compel an employer to violate a provision of the act, or any other law of the United States.

"However, during the last few months preceding enactment, the Board's decisions reflected a stiffening

attitude regarding strikes conducted for unlawful objectives. Noting this change, the managers on the part of the House stated in the conference report that amendments to prohibit such activities seemed 'unnecessary' (H. Rept. 510, 80th Cong. 1st Sess. p. 39), and the amendments were not included in the law as finally enacted" (pp. 83-84).

The Watchdog Committee, in commenting on this section of the report of the Conference Committee, stated that additional legislation was now required. It was recommended that Section 13 of the 1947 Act be amended as follows (p. 87):

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right, but this Act shall not be construed as conferring any remedy under sections 7 and 8 if it is a strike, an objective of which is to compel an employer to—
>
> (1) * * *
>
> (2) * * *
>
> (3) violate a provision of this Act or any other law of the United States."

The Committee stated further that (p. 87):

> "If the Congress agrees with the committee that the employer who refuses, at the risk of a loss of his business, to yield to a union's illegal demands is entitled to more protection than the possible deterrent provided by a loss to the participants of their rights under the act, another remedy is suggested."

It was therefore recommended that a new subdivision be added to Section 8 (b) (4) to read as follows (p. 87):

> "(E) Forcing or requiring any employer to violate a provision of this act or any other law of the United States."

If prohibited by Section 8 (b) (4), such conduct would be subject to injunctive relief upon application by the Board to the District Court (Sec. 10 (e) of the Act). All of the foregoing recommendations were rejected.

Thus, Congress has adhered to the judgment which it made when it enacted the Labor-Management Relations Act, viz., that the public interest is better served if picketing of this nature is unhampered.

POINT III

Petitioners' Purported Analysis of the Federal Act and its Legislative History is Unsupportable.

A. The authorities relied upon are not germane to the issues presented by this case.

Petitioners' Brief (pp 21-61) is a lengthy, elaborate—and we submit mistaken—effort to show that Congress in the Statute and its legislative history expressed its intention not to supersede State Court jurisdiction in the field covered by the Act. It will be found upon examination that the quotations given are out of context and do not sustain the proposition urged by Petitioners. The few references indicating an area of jurisdiction for State authorities concern only such matters as threats, violence, mass picketing and similar infractions of ordinary police measures of every local community. Congress, in proscribing such Union conduct made it clear that such local police regulations remained unimpaired; and, that is the full extent to which the references cited by Petitioners can go.

In essence such conduct would constitute an independent violation of the laws of the State relating to the protection of the persons and property of its citizens. Although such conduct may, within the context of a particular labor controversy, incidentally also violate the Federal Statute, it is fundamentally a violation of a general rule of conduct applicable to all individuals and is regulated by the State as such.*

A more accurate appraisal of the Statute and its legislative history inevitably leads to a directly opposite conclusion than that advanced by Petitioners. Such examination, to which we now turn, will establish that Congress left no room for State regulation of the conduct involved in the instant case.

---

* Most of the cases cited in Petitioners' Brief as authority for State regulation are within the scope of this proposition. For example: the following cases cited by Petitioners involve mass picketing, violence, or threats of injury to person or property: Southern Bus Lines v. Amalgamated Ass'n, 205 Miss. 364, 38 S. 2d 765; Rice and Holman v. United Electrical Workers, 3 N. J. Super. 535, 65 A 2d 258; Thayer v. Binnall, 320 Mass. 467, 95 N. E. 2d 193; Edwin Mills Inc. v. Textile Workers, 234 N. C. 331, 67 S E 2d 272; Worter Mills v. Textile Workers, 360 Pa. 359; Molders Union v. Texas Foundries, Inc. (Tex. Civ. App.) 241 S W 2d 215; Williams v. Cedartown Textile, 208 Ga. 659, 68 S E 2d 705; Russel v. International Union (Ala.) 64 S W 2d 384.

The following involves situations based upon breach of contract: Union Oil Co. v. Oil Workers Union, California Super Ct. 103 Cal., App. 2d, 513, 230 P 2d 71; General Building Contractors Ass'n v. Local Union, 370 Pa. 73; Linn Oil Co v. Marsh (Ark.) 249 S W 2d 569.

The following involves a tort action based upon procurement of breach of contract; Art Steel Co. v. Velazquez, 111 N. Y. S 2d 198.

In the Allen-Bradley case, *supra*, which arose during the Wagner Act, the conduct complained of involved mass picketing and threats of bodily injury to the person and property of the employers, matters traditionally within the police power of the State in preserving law and order. Thus, the Supreme Court, in upholding the state's power declared that the situation was "not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes." (p. 751).

B. The language of the Federal Act and its legislative History clearly exclude parallel state action in this case.

The National Labor Relations Act of 1935 represented the first considered and intentionally permanent Congressional venture into the field of labor relations. It was a calculated effort to establish a uniform nation-wide labor relations policy. As stated by former Associate Justice Owen J. Roberts: "For years the country had been plagued by labor controversies. Statutes and decisions in the various states differed widely, and it was thought that a uniform system of regulation of labor relations would aid in the solution of the problem. The question arose whether Congress could establish a uniform system for the whole nation. Addressing itself to the problem, Congress adopted the National Labor Relations Act." Roberts, *The Court and the Constitution*, pp 49, 50 (1951).

Through this legislation, Congress established the National Labor Relations Board which it designated "as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261, 265. The Statute was consequently denominated "federal legislation, administered by a national agency, intended to solve national problem, on a national scale * * * Jerome v. United States, 318 U.S. 101, 104." *N.L.R.B. v. Hearst Publications*, 322, U.S. 111, 123.

This Statute was clearly intended to bar the states from concurrent regulations. As this Court has said, Congress in the Wagner Act spoke "So unequivocally as to make clear that it intends no regulation except its own." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 236.

No changes which are relevant here were made by the 1947 amendments. Centralization of control over the national labor policy in the Board was still essential. By the pattern of regulation[30] of the amended Act as in the predecessor Act, "Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the task." *Amazon Cotton Mill Co. v.* (C. A. 4) *Textile Workers Union*, 167 F 2d 183, 187. This mechanism was the product of the design and intention of Congress to insure "disinterested, public interest standards and expertness of a governmental agency which has the initiative control of retributory measures." *Bruce's Juices, Inc. v. American Can Co.*, 330 U.S. 743, 751.

The 1947 amendments to the Wagner Act were considered by Congress at a time when the proper balancing of state-national relationships in the field of labor relations was a burning issue. The *Bethlehem Steel* case, *supra*, had just been decided. The question of federal and state authority in this field was fully debated. Every aspect of the problem was considered. When Congress spoke, its words were carefully weighed and its determination was clear cut and definite. Section 10(a) of the amended Act contains its basic judgment as to the line to be drawn. It retains the exclusive power of the National Board to administer and enforce the Act and occupy the field comprehended by the national labor policy, except in a narrow ambit specifically spelled out in the proviso to that Section. That proviso provided for cession of jurisdiction to state agencies under certain circumscribed circumstances.

---

[30] See Appendix C, pp. 72-74 inc.

Congress was well aware that the broad grant of power to the Board in Section 10(a) "preempts the field that the Act covers insofar as Commerce within the meaning of the Act is concerned." H R Rep. No. 245, 80th Cong. 1st sess., 44 (1947) quoted with approval in *Amalgamated Association v. Wisconsin Board* (340 U. S. 383).

Accordingly, conscious of the pre-emptive character of the Act over all matters in the field not specifically excepted, Congress took great care in each and every instance where it intended state action to spell it out in precise terms. One such instance of delegation, and that which relates to the power of the states to regulate union security contracts under Section 14 (b), was reviewed by this Court in *Algoma Plywood and Veneer Co. v. Wisconsin Board, supra*, and it was made clear that the states were empowered to act because, and only because, the Congressional history of the legislation and the precise language of the statute expressly preserved that power for the states. Other such instances of specific delegation in addition to the foregoing are set out in the footnote.[21] Petitioners place great stress upon the deletion of the word "exclusive" by Congress in its 1947

---

[21] (1) Congress in the regulation of the duty to bargain collectively required the parties, as a condition precedent to the termination or modification of an existing contract, to file a thirty-day notice of the existence of a dispute with the State mediation or conciliation service, Section 8 (d) (3). (2) In the treatment of labor disputes, the Act authorizes the Federal Mediation & Conciliation Director to "establish suitable procedures for co-operation with the state and local mediation agencies," Section 203 (c). (3) The Act directs that both the Director and the Service shall "avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State * * * conciliation services are available to the parties," Section 203 (b). (4) Finally, Section 303 (b) permits suits for damages to business or property resulting from boycotts or other unlawful combinations defined in Section 303 (a) to be brought in either the federal district courts "or *in any other court* having jurisdiction of the parties." (Italics supplied.)

amendment to Section 10 (a). They contend that the deletion of that word constituted a grant of authority for state court to act in this case. It is submitted, however, that in the light of the many manifestations of Congressional intention to vest administration and enforcement of the policies expressed in the Act in the Board with the supplementary assistance of the courts limited to specified conditions and situations, the presence or absence of the word "exclusive" does not alter the construction compelled by the terms of the statute.

As stated by this Court in the case of *Bethlehem Steel Co. v. N. Y. L. R. B.*, 330 U.S. 767, 772, "it long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject although express declaration of such result is wanting."

The legislative history refutes Petitioners' contention. As was explained by the House conferees, the characterization of the Board's power as "exclusive," while proper under the more limited Wagner Act, was no longer an appropriate description under the comprehensive pattern of regulation devised by the 1947 amendments because the amended act contained new "provisions authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in the Federal District Court while awaiting proceedings before the Board, and also "provisions making unions suable" for money damages in Section 303 arising out of conduct proscribed by Section 8(b)(4). (H. Conf. Rept. No. 510, 80th Cong. 1st sess. 52). This explanation demonstrates beyond dispute that Congress did not intend, by the omission of the word, to abandon its carefully devised comprehensive scheme of enforcement to the vagaries of thousands of inexpert tribunals. *Amazon Cotton Mill Co. v. Textile Workers Union*, (C.A. 4) 176 F. 2d 183, 187; *Gerry v. Superior Court*, 32 Cal. 2d 112, 124 P. 2d 689, 694,

686; *McNish v. American Brass Co.*, 139 Conn. 44, 89 A 2d 866, cert. den. 75 S. Ct. 362; *Born v. Cease*, 101 F. Supp. 475, 477 (D.C. Alaska).

The use of the term "exclusive" in describing the power of the Board in Section 10(a) of the Wagner Act was not a requisite to assure the Board powers of such character but was merely confirmatory of the requirements of the Act. See *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261. The determination of whether enforcement machinery created by Congress is exclusive is not dependent upon its specific description as such. As this Court has held, "The specification of one remedy normally excludes another." *Switchmen's Union v. National Mediation Board*, 320 U.S. 297, 301.

This Court has evidently noted the absence of the word "exclusive" in the Algoma case, *supra*, and has stated that: "Section 10 (a) of the Taft-Hartley Act * * * contains important changes, but none requiring a modification of the conclusion reached as to the corresponding section of the National Labor Relations Act * * *" (336 U.S. 313.

Thus, the exclusive character of the Board's power must continue notwithstanding the deletion of the word "exclusive." The amended Act makes the intention to debar concurrent state remedies inescapable. For as this Court stated in *California v. Zook*, 336 U.S. 725, 732: "When State enforcement mechanisms so helpful to Federal officials are to be excluded, Congress may say so, as in the Labor Management Relations Act, 1947."

The foregoing is clearly dispositive of Petitioners' effort to tailor the legislative history to suit their needs. What has already been said plainly leaves no room for an injunction suit by private parties to forbid the conduct complained of in this case. But, could any doubt remain, it is completely

dissipated by consideration of efforts made during the legislative processes to grant precisely such authority to private parties—efforts which were considered by Congress and rejected on the merits.

A minority of the Senate Labor Committee composed of Senators Taft, Ball, Donnell and Jenner, proposed that private persons be allowed direct recourse to Federal District Courts for injunctions for certain violations of the Act. (S. Rep. No. 105, 80th Cong., 1st sess. 54-58.) Senator Ball introduced an amendment to this effect and vigorously urged its adoption in debate. 93 Cong. Rec. 4834-4868. The Senate, after lengthy debate, rejected the proposal. 93 Cong. Rec. 4847. It was turned down because enforcement was deemed more suitably entrusted to an administrative agency which would, contrary to Senator Ball's view, "first screen the charges, before the Courts are permitted to pass on them," 93 Cong. Rec. 4838,[22] and because of the further fear that private recourse to injunctive relief would reintroduce the unlamented era of government by injunction. 93 Cong. Rec. 4839, 4841, 4843; see also, 4834-4847, 4864, 4865, 4448, 4132-4133, S. Rep. No. 105, 80th Cong. 1st sess. 54.

After the remedy of private injunction was thus rejected, a compromise proposal of money damages only to private parties for conduct prohibited by Section 8(b)(4) was offered and adopted, 93 Cong. Rec. 4843-4844, 4868-4869, 4874.

Since, against such background, the only judicial action which Congress authorized private parties to initiate in any court (state or federal) are suits for damages, any other remedy is prohibited. It is prohibited both in federal and state courts. Congress having considered and rejected

[22] For the rejected minority view see also, S. Rep. No. 105, 80th Cong., 1st sess. 54.

a broader proposal, which would have permitted private parties to obtain injunctions in the courts "as being inconsistent with its policy," private injunctions are no longer available. The prohibition was deemed necessary for the effectuation of the purposes of the Act.

POINT IV

The Instant Case Demonstrates the Dire Consequences of the "Concurrent Jurisdiction" Principle in this Field.

The case here on review dramatically illustrates the unwholesome consequences of the principle of concurrent jurisdiction for which Petitioners contend. Petitioners assert (Brief p. 35, 36) that "the enlightened self-restraint of State Courts" is adequate assurance against "the improper use of labor injunctions," and, that in the "few and far between" cases in which abuses occur, the National Board has "adequate power" to enjoin the improper State Court proceedings.

This is empty theory wholly at variance with the facts of life. The most superficial observation of scores of recent decisions of state courts throughout the country in picketing cases, particularly in courts of initial jurisdiction, reveals a constant disregard of the "self-restraint" which Petitioners so lightly invoke. Rights guaranteed by Section 7 of the Act are being wholly ignored and vitiated every day. This is not surprising so long as state court judges, often unacquainted with the intricate problems of construction of the Act, and asked to act summarily, continue to believe they have authority to pass upon the rights and duties set forth by Congress in the Act. This intolerable condition will continue until and unless this Court makes plain that such authority has been denied to them by Congress.

The instant case is an example. The Union sought to picket for organizational purposes in June, 1949. Within a matter of days, it found itself enjoined by the State Court by a temporary injunction from all picketing for any purposes whatsoever. Petitioners in their brief (p. 94) say that the National Board did not "see fit to exercise jurisdiction here," but they omit the critical fact that the Board could not exercise jurisdiction until and unless a charge was filed with it,[28] something which Petitioners did not do but chose to run to the State Court instead.

The temporary injunction was "temporary" in name only. It remained in force banning all picketing for nearly three years until March 1952. Even then it required two separate motions by Union Counsel before the Court would set down the case for final hearing and conclude it (R-110a, 111a, 135a, 136a). The temporary injunction was followed by a like permanent injunction which remained in force for almost another year until reversed by the Supreme Court in February 1953.

Petitioners' suggestion that the National Board can police the "ifs and far between" abuses by state courts is unrealistic. The Board is simply not geared, in manpower or otherwise, to act as a supervising agent over the myriad state courts throughout the country. Indeed, in most instances it has no way of knowing what is happening each day on applications for temporary injunctions, in the thousands of tribunals throughout the land.

Even where it does know, the Board does not have the facilities to take action. In the instant case, its aid was informally sought by the Union when the case was being ap-

---

[28] As the Supreme Court of Pennsylvania later pointed out, Petitioners would have had an "adequate and complete" remedy before the Board (R-236, 238).

pealed to the State Supreme Court. We were told that the Board was simply unable to undertake the policing of the many such cases at the state level.

Had Petitioners filed a charge with the Board as they should have, that agency would have processed the case as Congress intended. The evidence would have been screened to make sure a prima facie case existed; the Union's protections under Section 7 and the possibly protected character of the picketing under Section 8(c) would have been passed on by the tribunal expert on that subject; had a violation been found, the restraining order instead of banning all picketing would have been limited to curing the specific violation found (see *N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426); and of course the unconscionable delay would have been avoided or at least minimized.

The deprivation of the Union's rights in this case through improper invocation of the State machinery illustrates the wisdom of the principle enunciated by this Court when it said "We do not think that a case by case test of federal supremacy is permissible here." *Bethlehem Steel Co.*, case, 330 U.S. at 776.

In this case, unlike the *Briggs-Stratton* case, *supra*, invocation of state authority was wholly unnecessary to limit "individual and group rights of aggression and defense" or to substitute "processes of justice for the more primitive method of trial by combat" (336 U.S. at 252). Petitioners, if wronged by the Union's activity, had access to the "processes of justice" set up by Congress and which the Supreme Court of Pennsylvania determined to be "comprehensive • • • adequate and complete." (R-236, 238).

POINT V

The Peaceful Picketing Purely for Organizational Purposes Under the Circumstances of this Case Was Protected by the Constitution of the United States

The undisputed facts of this case establish that Respondent's activity was limited to the exercise of their constitutionally guaranteed right of free speech. Their conduct consisted solely of advertising an appeal through pickets to nonunion workmen to join their organization.[34] The lower court enjoined the activity on the conclusionary finding that it went "beyond the field of persuasion * * * into the field of intimidation or business compulsion deliberately designed to coerce Petitioners, by causing it substantial business losses[35] to compel * * * its employees to become members of the Union.[36] There was absolutely no evidentiary basis for this finding. The direct, positive and undisputed evidence relating to the purpose of the picketing was not susceptible to the inference drawn therefrom.[37]

The right to picket peacefully and truthfully is one of organized labor's lawful means of advertising its cause, and

---

[34] There is absolutely no evidence of any other purpose. That such was in fact their purpose is supported by their preparations for such activity, the absence of any demand upon the employer, the absence of any threats upon employer, employees, or employees of neutrals as well as the absence of any sanctions upon its members. (Findings of Fact, Nos. 11, 12, 15, 16, 17, 26, 26, 27, 28, 29, 32, 33, R-178a-178a)

[35] The extent of the business losses as stated by the trial court is an additional conclusion. Garner admitted that his Reading Railroad business was not affected. (R93a) The relationship of such business to the total business was not shown. This issue of fact was not tested in these proceedings because it was not a relevant factor under the Anti-Injunction Act, supra.

[36] Finding of Fact No. 40, R-179a.

[37] See findings listed in footnote numbered 34 above. It will be noted that such findings point in a direction opposite to that of the trial court's inference or pressed in Finding of Fact No. 40. See also,

as such, is guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, and also, Article 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania, as an incident of free speech. *Senn v. Tile Layer's Union* 301 U.S. 468; *Thornhill v. Alabama*, 310 U.S. 88; *Carlson v. California*, 310 U.S. 106; *Kirnee v. Adler*, 311 Pa. 78; *Friedman v. Blumberg*, 342 Pa. 387; and numerous other cases. The quality of the free speech guaranteed by the constitution is such that it includes the dissemination of information on a number of subjects within the scope of our industrial economy and particularly the advantages of organization.[20] Consequently peaceful and truthful picketing, for the purpose of appealing to and otherwise persuading employees to join a labor organization, has been held to be protected as an incident of free speech. *American Federation of Labor v. Swing*, 312 U.S. 321, and *Friedman v. Blumberg, supra*. Such picketing, "carried on solely for organizational purposes," is within the constitutional protection. *Painters Union v. Rountree Corp.*, 194 Va. 148, 72 S. E. 2d 402, quoted with approval in *Plumbers Union v.*

Henderson v. National Drug Co., 343 Pa. 601, 23 A 2d 743, 607, 608, which requires that when an inference of ultimate fact is drawn from facts whose existence is itself based only on an inference all prior inferences must be established to the exclusion of any other theory. If the purpose of the picketing was to be inferred many more logical conclusions, all lawful in nature, suggest themselves, such as picketing to inform the public; or, to seek a bargain for its members only.

This Court has the power to search the record in this case to determine the merit of the constitutional question raised herein * * * "it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality." Drivers Union v. Meadowmoor Dairies, 312 U. S. 287, 293, 294.

[20] In Thomas v. Collins, 323 U. S. 516, 65 S. Ct. 315, at 342 it was held: "* * * The right thus to discuss and inform people concerning the advantages and disadvantages of unions and joining them is protected not only as a part of free speech, but as a part of free assembly."

Graham, —U.S.—, 73 S. Ct. 585; *Garner v. Teamsters*, 373 Pa. 19; *Pappas v. Local Joint Board*, —Pa.—, 96 A. 2nd 915; and *Tomagno v. Waiters Union*, 373 Pa. 457.

Picketing, however, is not beyond the control of a State "if the manner in which (it) is conducted or the purpose which it seeks to effectuate gives ground for its disallowance." *Bakery and Pastry Drivers and Helpers v. Wohl* (315 U.S. 769 at 775). In pursuance with the limitations suggested by the last cited case, picketing has been enjoined because of its manner, in *Drivers Union v. Meadowmoor*, 312 U.S. 287; *Carnegie-Illinois Steel Corp. v. United Steelworkers*, 353 Pa. 420; *Westinghouse Electric Corp. v. United Electrical*, 353 Pa. 458; and *Worter Mills, Inc. v. Textile Workers Union*, 369 Pa. 359. Picketing likewise, has been enjoined because it sought to effectuate an illegal purpose or object as in *Giboney v. Empire Storage and Ice Co.* 336 U.S. 490, where it was for the avowed purpose of compelling an employer to violate a state anti-trust statute; or, because it was used as a medium to control an employer's business, as in *Teamsters v. Hanke*, 339 U.S. 470; or compel an employer to violate the policy of a state as enunciated in its labor laws, as in the cases of *Building Service Union v. Gazzam*, 339 U.S. 532; *Wilbank v. Chester and Delaware Counties Bartenders Union, supra*, and, *Phillips and Ostroff v. United Brotherhood of Carpenters, supra.*

Neither the undisputed evidence nor any inference with is legally deducible therefrom brings the instant matter within the purview of the above-cited cases. Nor have the principles enunciated in such cases impinged upon the free speech guaranty which was expressed in suport of picketing in the *Thornhill, Carlson & Swing* cases, *supra*, and which is applicable here. (Compare: *Painters Union v. Rountree Corp., supra*, with *Plumbers Union v. Graham, supra.*)

The only reason offered by the trial court for the reasoning process or inference which it employed to reach the conclusion necessitated by the decree was that the picketing was inducing third persons to withhold patronage to Petitioners' economic loss and hence was "coercive."

The reasoning of the lower court is in error not only because it disregards the laws of evidence as has been mentioned above, but also because it misconceives the significance of such coercion as may be inherent in constitutionally protected picketing.

Picketing, being an incident of speech, partakes of those qualities which are inherent in the full and free exercise of the right to disseminate information. Potentially the use of such right may affect adversely some one's interests. Mr. Justice Murphy explained these possibilities in the case of *Thornhill v. Alabama, supra,* (310 U.S. 104):

> "* * * It may be that effective exercise of the means of advancing public knowledge *may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute.* Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment *may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may be persuaded to take action inconsistent with its interests* * * *" (Italics our own)

The limits marked for the exercise of the constitutional prerogatives as set forth in *Cafeteria Employees Union v. Angelos* (320 U.S. 293 at 295): as "* * * acts of coercion

going beyond the mere influence exerted by the fact of picketing * * *" have not been exceeded in the instant case where there was a complete absence of force, threats, violence, or boycott.

Respondents in the case at issue at all times acted within the limits approved by the Pennsylvania Supreme Court in *Kirmse v. Adler, supra*, where, after a review of the evidence which established that the activity did not cause people to congregate, or tend to draw a crowd of noisy or disorderly people, and did not constitute a nuisance, it was held that "There was no annoyance, intimidation, or moral coercion from these acts" (311 Pa. 88).

The facts as found by the court below precluded its conclusion of "coercion" and provided sanction for the picketing. The findings that those drivers who refused to make deliveries acted solely by reason of their personal adherence to a union tradition[39] and the absence of even as much as an implied threat of reprisal[40] destroyed the foundation essential for actionable coercion and qualified the picketing in the instant case as lawful by the test established by the Pennsylvania Supreme Court in *Kirmse v. Adler, supra*, where the lower courts' finding of coercion was rejected because:

> *"The minds of the parties who received or saw the notice were free to follow their unrestrained inclination;* they were at entire liberty to go to the theater unmolested if they saw fit. There was not the slightest allusion to a threat of any character * * *" (Italics supplied) (311 Pa. 87)

The Supreme Court of Pennsylvania has continued to protect peaceful picketing for organizational purposes.

---

[39] See Finding of Fact No. 30, R-177a.

[40] See Findings of Fact No. 20, 30, 32, R-177a, 178a.

Garner v. Teamsters, supra; Pappas v. Local Joint Board, supra; and, *Tomango v. Waiters Union, supra.*

The effect of the decree of the trial court would be to sanction the exercise of the right to picket only where its use and enjoyment prove to be ineffectual and fruitless, and to bar the right, where it evokes a response.[41] Such a rule results in a complete negation of the right itself. Mr. Justice Douglass indicated that such a construction was not permissible under the rule enunciated in *Thornhill's* case, *supra*, in his concurring opinion in the case of *Bakery and Pastry Drivers v. Wohl, supra*, when he said (315 U.S. 775):

> "If the opinion in this case means that a State can prohibit picketing when it is effective but may not prohibit it when it is ineffective, then I think we have made a basic departure from *Thornhill v. Alabama*, 310 U.S. 88 * * *"

This court demonstrated that it had no intention to depart from the basic tenets of *Thornhill's* case, *supra*, when in the case of *American Federation of Labor v. Swing, supra*, it held (312 U.S. 326):

> "* * * Communication by such employees of the facts of a dispute deemed by them to be relevant to their interest, *can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion* than could the utterance protected in *Thornhill's case* * * *" (Italics supplied)

---

[41] The court below appears to have exaggerated the economic impact of the picketing on Petitioners' business in view of the evidence to the effect that some of the unionized drivers of Petitioners' customers passed the pickets (47a, 53a, 54a, and 73a) and its further Finding of Fact No. 5, 172a, to the effect that "the picketing here in question did not prevent Central from making deliveries of these interstate shipments." It is to be noted that no award of damages was entered by the court below.

However, since the lower court resorted to an "ends-means" test to infringe upon a fundamental right it becomes a matter of substantial consequence that this view and its implications be scrutinized with great care and grave concern. The recent expressions of this Court, emanating from the decision in the *Wohl* case, *supra*, indicating the presence of coercive ingredients in picketing as a means of communication have bred a variety of attempts by lower courts to divide labor's traditional method of communicating its message into the elements of "communication" and "compulsion" with the latter factor negating the former. Unless the line is sharply delineated to permit peaceful picketing under the circumstances of the instant case the "communication" aspect of picketing will be destroyed.

Peaceful picketing for a lawful purpose, as a means of communication, cannot be denied constitutional protection because of its economic impact without doing substantial violence to free society. Labor unions, denied this form of communication must, for survival, turn to others. Will they then be denied the press, the radio, or the television as each such medium demonstrates effectiveness with the readers and auditors? Logic compels the conclusion that if the effectiveness of a means or method of communication is to determine the protected quality of speech, then, at one time or another, and under some circumstance that must inevitably occur in our ever changing and dynamic society, every means or method of communication must be denied us. It is impossible to atomize the methods of communication into separate legalistic components without destroying the very right to communicate itself.

This Court has indicated the line of demarcation which it follows in the recent decision in *Plumbers Union v. Gra-*

ham,[42] *supra*, by its comparison of the application of the constitutional guaranty to the facts of that case with its approval of the application of such guaranty by the state court to the facts of the case of *Painters Union v. Rountree Corp.*,[43] *supra*. The Supreme Court of Virginia in the Rountree case, *supra*, considered facts almost identical with those presented by the record in the case here in review, and held that "If the peaceful publication of the facts in an effort to unionize the painters resulted in economic pressure on the complainants ** * * that result did not make the purpose unlawful or the picketing illegal.*" (Italics supplied) (72 S.E. 2d 405)

Picketing, as in the instant case, as a means of publicizing an appeal to workmen to join a union conducted peacefully, and at their regular place of employment, does not become actionable because it influenced third persons to withhold their patronage.[44] The principle as expressed in the *Thornhill*, *Swing* and *Angelos* cases, *supra*, quoted above, and in Mr. Justice Douglass' concurring opinion in the *Wohl* case, *supra*, has been resolved into the controlling rule which is set forth in the Restatement of the Law of Torts, Vol. 4, Page 97, Section 775:

> "Workers are privileged intentionally to cause harm to another by concerted action if the object and the means of the concerted action are proper; they are subject to liability to the other for harm so caused if either the object or the means of their concerted action is improper."

---

[42] The facts in that the Graham case bring it within the purview of the rule in the Gazzam case, *supra*.

[43] The facts in the Rountree case are almost identical with those presented by the case here on review.

[44] Particularly where as here it was found as a fact that Defendant Union did not induce or encourage concerted action of such third persons.

From the foregoing authorities, it is quite clear that the finding of the unlawful object essential to justify judicial restraint of peaceful and truthful picketing must be based upon proof of facts other than and independent of the effect of mere picketing as such upon third persons and the resultant economic impact upon Petitioners' business. The possible coercive quality inherent in the mere fact of picketing does not supply the unlawful object essential to disqualify the activity from the protection of the constitution.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be affirmed.

SIDNEY G. HANDLER,
EDWARD DAVIS,
Counsel for Respondents.

On the Brief:
SIDNEY G. HANDLER,
MORRIS P. GLUSHIEN,
October, 1953.

APPENDIX A

The relevant provisions of the Pennsylvania Labor Relations Act (1937 June 1, P. L. 1168 No. 294 43 PS 211.1 et. seq.) are as follows:

The Act as originally enacted is shown in roman; the amendments are shown in italics.

PENNSYLVANIA LABOR RELATIONS ACT

SECTION 2:

(a) Under prevailing economic conditions, individual employes do not possess full freedom of association or actual liberty of contract. Employers in many instances, organized in corporate or other forms of ownership associations with the aid of government authority, have superior economic power in bargaining with employes. This growing inequality of bargaining power substantially and adversely affects the general welfare of the State by creating variations and instability in competitive wage rates and working conditions within and between industries, and by depressing the purchasing power of wage earners, thus—(1) creating sweatshops with their attendant dangers to the health, peace and morals of the people; (2) increasing the disparity between production and consumption; and (3) tending to produce and aggravate recurrent business depressions. The denial by some employers of the right of employes to organize and the refusal by employers to accept the procedure of collective bargaining tend to lead to strikes, lock-outs, and other forms of industrial strife and unrest, which are inimical to the public safety and welfare, and frequently endanger the public health.

(b) Experience has proved that protection by law of the right of employes to organize and bargain collectively removes certain recognized sources of industrial strife and unrest, encourage practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and tends to restore equality of bargaining power between employers and employes.

(c) In the interpretation and application of this act and otherwise, it is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers.

(d) All the provision of this act shall be liberally construed for the accomplishment of this purpose.

(e) This act shall be deemed an exercise of the police power of the Commonwealth of Pennsylvania for the protection of the public welfare, prosperity, health, and peace of the people of the Commonwealth.

* * *

SECTION 5:

Employes shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Appendix A

SECTION 6:

(1) It shall be an unfair labor practice for an employer—

(a) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other material support to it: Provided, That subject to rules and regulations made and published by the board pursuant to this act, an employer shall not be prohibited from permitting employes to confer with him during working hours without loss of time or pay.

(c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this act, or in any agreement approved or prescribed thereunder, or in any other statute of this Commonwealth, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employes, as provided in section seven (a) of this act, in the appropriate collective bargaining unit covered by such agreement when made and if such labor organization does not deny membership in its organization to a person or persons who are employes of the employer at the time of the making of such agreement, provided such employe was not employed in violation of any previously existing agreement with said labor organization.

(d) To discharge or otherwise discriminate against the employe because he has filed charges or given testimony under this act.

(e) To refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act.

(f) To deduct, collect, or assist in collecting from the wages of employes any dues, fees, assessments, or other contributions payable to any labor organizations, unless he is authorized so to do by a majority vote of all the employes in the appropriate collective bargaining unit taken by secret ballot, and unless he thereafter receives the written authorization from each employe whose wages are affected.

(2) It shall be an unfair labor practice for a labor organization or any officer or officers of a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert—

(a) To intimidate, restrain, or coerce any employe for the purpose and with the intent of compelling such employe to join or to refrain from joining any labor organization, or for the purpose or with the intent of influencing or effecting his selection of representatives for the purposes of collective bargaining.

(b) During a labor dispute, to join or become a part of a sit-down strike, or, without the employer's authorization, to seize or hold or to damage or destroy the plant, equipment, machinery, or other property of the employer, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

(c) To intimidate, restrain, or coerce any employer by threats of force or violence or harm to the person of said employer or the members of his family, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

(d) To engage in a secondary boycott, or to hinder or prevent by threats, intimidation, force, coercion or sabotage the obtaining, use or disposition of materials, equipment or services, or to combine or conspire to hinder or prevent by any means whatsoever, the obtaining, use or disposition of materials, equipment or services.

(e) To call, institute, maintain or conduct a strike or boycott against any employer or industry or to picket any place of business of the employer or the industry on account of any jurisdictional controversy.

APPENDIX B

The relevant provisions of the Labor Injunctions Act (1937 June 2 P. L. 1198, 43 PS 206 et seq.), are as follows:

The Act as originally enacted is shown in roman; the amendments are shown in italics.

LABOR INJUNCTION ACT

SECTION 1:

In the interpretation of this act and in determining the jurisdiction and authority of the courts of this Commonwealth, as such jurisdiction and authority of the courts of this Commonwealth, as such jurisdiction and authority are defined and limited in this act, the public policy of this Commonwealth is hereby declared as follows:

(a) Under prevailing economic conditions developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties or that permits sweeping injunctions to issue after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court is peculiarly subject to abuse in labor litigation for the reasons that—

(1) The status quo cannot be maintained, but is necessarily altered by the injunction.

(2) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and under the circumstances untrustworthy rather than from oral examination in open court is subject to grave error.

(3) Error in issuing the injunctive relief is usually irreparable to the opposing party; and

(4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

* * *

SECTION 3:

When used in this act and for the purposes of this act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft or occupation, or have direct or indirect interests therein, or who are employes of the same employer, or who are members of the same or an affiliated organization of employers or employes, whether such dispute is—(1) between one or more em-

ployers or associations of employers, and one or more employes or association of employes; (2) between one or more employers or associations of employers and one or more employers or association of employers; or (3) between one or more employes or association of employes, and one or more employes or association of employes; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, craft or occupation in which such dispute occurs or has a direct or indirect interest therein, or is a member, officer or agent of any association composed in whole or in part, of employers or employes engaged in such industry, trade, craft or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment or concerning employment relations or any other controversy arising out of the respective interests of employer and employe, regardless of whether or not the disputants stand in the proximate relation of employer and employe, and regardless of whether or not the employes are on strike with the employer.

(d) The term "court" includes every court of common pleas of the several counties of this Commonwealth, including the judge or judges thereof.

(e) The term "complainant" includes every person whether plaintiff or defendant in the cause who seeks affirmative relief.

(f) The term "defendant" includes every person whether plaintiff or defendant in the cause against whom affirmative relief is sought.

(g) The term "employer" is declared to include master, and shall also include natural persons, partnerships, unincorporated associations, joint-stock companies, corporations for profit, corporation not for profit, receivers in equity and trustees or receivers in bankruptcy.

(h) The term "employe" is declared to include all natural persons who perform services for other persons, and shall not be limited to the employes of a particular employer, and shall include any individual who has ceased work as a consequence of, or in connection with, any matter involved in a labor dispute.

(i) The term "organization" shall mean every unincorporated or incorporated association of employers or employes.

(j) The term "labor organization" shall mean every organization of employes, not dominated or controlled by any employer or any employer organization, having among its purposes that of collective bargaining as to terms and conditions of employment.

(k) The term "employer organization" shall mean every association of, or agency representing, or maintained by, employers, having among its purposes or activities that of studying or advising concerning relations between employers and employes, or bargaining, negotiating or dealing with employes or labor organizations.

SECTION 4:

No court of this Commonwealth shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case included within this act, except in

strict conformity with the provisions of this act, nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this act. Exclusive jurisdiction and power to hear and determine all actions and suits coming under the provisions of this act, shall be vested in the courts of common pleas of the several counties of this Commonwealth. *Provided, however, That this act shall not apply in any case—*

*(a) Involving a labor dispute, as defined herein, which is in disregard, breach, or violation of, or which tends to procure the disregard, breach or violation of a valid subsisting labor agreement arrived at between an employer and the representatives designated or selected by the employes for the purpose of collective bargaining as defined and provided for in the act, approved the first day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand one hundred sixty-eight), entitled "An act to protect the rights of employes to organize and bargain collectively; creating the Pennsylvania Labor Relations Board; conferring powers and imposing duties upon the Pennsylvania Labor Relations Board, officers of the State government and courts; * * * and amendments thereto or as defined and provided for in the National Labor Relations Act, approved the fifth day of July, one thousand nine hundred and thirty-five; Provided, however, That the complaining person has not, during the term of the said agreement, committed an act as defined in both of the aforesaid acts as an unfair labor practice or violated any of the terms of said agreement.*

(b) Where a majority of the employes have not joined a labor organization, or where two or more labor organizations are competing for membership of the employes and any labor organization or any of its officers, agents, representatives, employes or members engages in a course of con-

duct intended or calculated to coerce an employer to compel or require his employes to prefer or become members of or otherwise join any labor organization.

(c) Where any person, association, employe, labor organization, or any employe, agent representative or officer of a labor organization engages in a course of conduct intended or calculated to coerce an employer to commit a violation of the Pennsylvania Labor Relations Act of 1937 or the National Labor Relations Act of 1935.

(d) Where in the course of a labor dispute as herein defined an employe or employes acting in concert, or a labor organization, or the members, officers, agents, or representatives of a labor organization or anyone acting for such organization, seize, hold, damage, or destroy the plant, equipment, machinery, or other property of the employer with the intention of compelling the employer to accede to any demands, conditions, or terms of employment, or for collective bargaining.

* * *

SECTION 6:

No court of this Commonwealth shall have jurisdiction or power in any case involving or growing out of a labor dispute to issue any restraining order or temporary or permanent injunction which, in specific or general terms, restrains or prohibits any person, association or corporation from doing, whether singly or in concert with others, notwithstanding any promise, undertaking, contract or agreement to the contrary, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment.

(b) Becoming or remaining a member of any labor organization or of any employer organization.

(c) Paying or giving to, or withholding from, any person any strike or unemployment benefits, or unemployment insurance, or other moneys or things of value.

(d) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit involving or raising out of, a labor dispute in any court of the United States or of this Commonwealth, or of any state.

(e) Giving publicity to, and obtaining or communicating information regarding the existence of, or the facts or merits involved in, any labor dispute, whether by advertising, speaking or picketing or patrolling any public street or place where any person or persons may lawfully be, or by any other method not involving misrepresentation, fraud, duress, violence, breach of the peace or threat thereof.

(f) Organizing themselves, forming, joining or assisting in labor organizations bargaining collectively with an employer by representatives freely chosen and controlled by themselves, or for the purpose of collective bargaining or other mutual aid or protection, or engaging in any concerted activities.

(g) Persuading by any lawful means other persons to cease patronizing or contracting with or employing or leaving the employ of any person or persons.

(h) Ceasing or refusing to work with any person or group of persons.

(i) Ceasing or refusing to work on any goods, materials, machines or other commodities.

(j) Assembling peaceably to do, or to organize to do, any of the acts heretofore specified, or to promote their lawful interests.

(k) Advising or notifying any person or persons of an intention to do or not to do any of the acts heretofore specified.

(l) Agreeing with other persons to do or not to do any of the acts heretofore specified.

(m) Advising, urging or otherwise causing or inducing, without misrepresentation, fraud or violence, others to do or not to do the acts heretofore specified; and

(n) Doing in concert with others any or all of the acts heretofore specified:

SECTION 7:

No court of this Commonwealth shall have jurisdiction or power in any case involving, or growing out of, a labor dispute to issue a restraining order or temporary or permanent injunction—

(a) Upon the ground that any of the persons participating or interested in the labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section six of this act; or

(b) Forbidding any of the acts enumerated in section six upon the ground that illegal acts have been committed or threatened in the course of any labor dispute, or that any ends sought to be accomplished by any party to the labor dispute are illegal.

* * *

SECTION 9:

No court of this Commonwealth shall issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute, except

after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained, but no temporary or permanent injunction or temporary restraining order shall be issued on account of any threat or unlawful act, excepting against the person or persons, association or organization, making the threat or committing the unlawful act, or actually authorizing or ratifying the same after actual knowledge thereof.

(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted.

(c) That, as to each item of relief granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by granting of relief.

(d) That no item of relief granted is relief which is prohibited under section six of this act.

(e) That complainant has no adequate remedy at law; and

(f) That the public officers charged with the duty to protect complainant's property are unable to furnish adequate protection.

Such hearing shall be held only after a verified bill of complaint and a verified bill of particulars specifying in detail the time, place and the nature of the acts complained of,

and the names of the persons alleged to have committed the same or participated therein, have been served, and after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city, within which the unlawful acts have been threatened or committed, charged with the duty to protect complainant's property. The hearing shall consist of the taking of testimony in open court with opportunity for cross-examination and testimony in opposition thereto, if offered and no affidavits shall be received in support of any of the allegations of the complaint.

APPENDIX C

Outline of Procedures for Vindication of Rights Claimed by Petitioners Available Under Labor-Management Relations Act, 1947.

Congress, in the enactment of the Labor-Management Relations Act of 1947 declared it to be the policy of such legislation "to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for the interference by either with the legitimate rights of the other, * * * to define and proscribe practices on the part of labor and management which affect commerce * * * and to protect the rights of the public in connection with labor disputes affecting commerce" (Section 1 (a)) expressly found that "* * * The denial by some employers of the right of employees to organize * * * lead to strikes * * * which have the effect of burdening * * * commerce * * * Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury * * * (and) has further demonstrated that certain practices by some labor oganizations * * * have the * * * effect of burdening * * * commerce: "and, accordingly declared it "to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce * * * by protecting the exercise by workers of full freedom of association, self-organization * * * for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." (Section 101)

Pursuant to such findings and policy the Act establishes the Board, creates the office of General Counsel, and em-

powers the Board "to prevent any unfair labor practice (listed in section 8) affecting commerce." (Sections 3(a), (b), (c), (d), and 10(a)) These unfair labor practices consist of the conduct which Congress considered to be in derogation of the rights guaranteed by Section 7, wherein it is provided that "Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities * * *," and include, inter alia, interference, restraint or coercion of employees by either an employer or a union, in the exercise of the rights guaranteed by Section 7, (Section 8(a)(1) and (b)(1)(A).), and the causing or any attempt, by a union, to cause an employer to discriminate against an employee in violation of subsection (a)(3) of Section 8, which prohibits an employer from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in a union. (Section 8(b)(2) and (a)(3))

Anyone (other than a labor organization which has failed to comply with certain filing requirements prescribed by Section 9(f)(g) and (h) of the Act) may seek redress against unfair labor practices by merely filing a charge with the Board. (Section 10(b)) This action sets in motion the machinery of an inquiry. Upon receipt of the charge, the Board, by its General Counsel is vested with authority to issue a complaint and notice of hearing which are served upon the party charged with the prohibited conduct. The person so complained of has the right to file an answer and to appear at a hearing to defend against the charge at a time which shall not be less than five days after service of the complaint. (Section 10(b)) At the hearing, which is based upon the issue raised by the complaint and answer

and is usually conducted by a trial examiner, evidence is offered in support of the positions of the respective parties and a record is made, reduced to writing and filed with the Board. (Section 10(b)) The Board, upon the record, enters its findings of fact and issues such order as in its judgment "will effectuate the policies of this Act." (Section 10(c)) Thereafter, either the Board may seek enforcement of its order, or any "person aggrieved by a final order of the Board granting or denying" relief may seek its review, in the United States Circuit Court of Appeals, which is vested, within the scope of permissible review, with "exclusive" jurisdiction to decide the controversy. (Section 10(e) and (f))

In any case wherein it is charged that a person or union "has engaged in or is engaging in an unfair labor practice" as provided for in Section 8(b)(1)(A) or (2) the "Board shall have the power, upon issuance of a complaint * * * to petition any district court of the United States * * * for appropriate temporary relief or restraining orde * * *" (Section 10(j)) In any such case where the Board seeks temporary injunctive relief the restrictions of the Norris-La Guardia Act are declared to be inapplicable. (Section 10(h))